Public Utilities

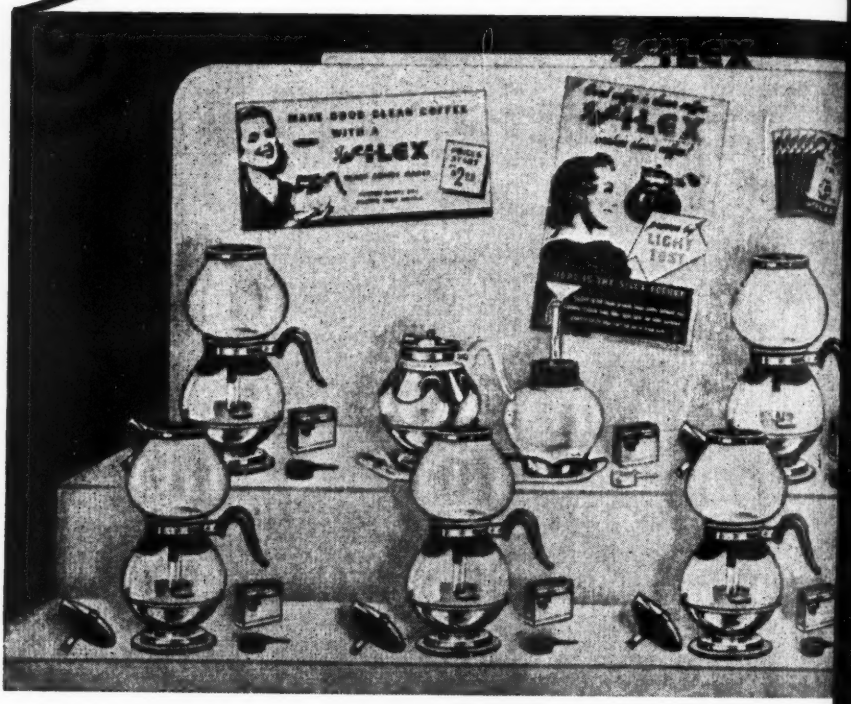
FORTNIGHTLY

September 11, 1941

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

ALL ELECTRIC Genuine SILEX ASSORTMEN

48% OFFERS UTILITIES PROFIT • READY SAL



SIX SILEX UNITS ★ YOU PAY FOR FI

● Now... a Silex assortment custom-built for utilities! Six fast-selling Silex electric units... Anyheet Control with every Saratoga model (adds 97 KWH). All models have Self-Timing stoves. Backed by powerful selling helps, tie-ins with the biggest Silex advertising campaign, featuring the new Light Test theme... proof of Silex superiority!

WRITE DIRECT . . . OR SEE YOUR DISTRIBUTOR TODAY!

THERE IS ONLY ONE
Genuine SILEX

The Silex Co. Dept. PUF..., Hartford, Conn.
Creators of the Glass Coffee Maker Industry

COST: $19.05 . . . PROFIT: $18.

No. of Units	Description	Pr
4	BWE8-B — 8 cup Bretton Electric Table Model, Black Trim, @ $5.95	$23.
1	SAE8TI — 8 cup Saratoga Electric Model Ivory with Moldex Buffet Tray	7.
1	BWE4-6B (FREE) — Bretton Electric Table Model, Black Trim	5.
	TOTAL LIST VALUE	$37.

SPECIAL LIST $31.75 DEALER COST $19

PROFIT $18.15 or 48 8%

Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH, NEIL H. DUFFY
Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXVIII *September 11, 1941* NUMBER 6

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

Publication Office ..... CANDLER BUILDING, BALTIMORE, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1941, by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

WITH all this worrying about priority shortages and rationing, the question arises, "How can public utility service be rationed if it is necessary?" It is a tough problem, and we all hope that it won't become necessary. But rationing and priorities which are simply the emergency names for Supply and Demand, which are the opposite side of the same old economic coin, have a way of penetrating quietly and deeply.

THE scarcity invariably starts with a few strategic raw materials such as aluminum, copper, and steel. Pretty soon secondary shortages begin to appear in processed commodities. These shortages, in turn, slow up the volume of consumer services which must be maintained by processed commodities. Thus, for want of copper the manufacturer may not be able to make enough transformers; and for want of transformers an operating electric utility may not be able to fulfill its total demand.

AGAIN, the question arises, "How can utility service be rationed?" The difficulty lies in the character of such service which is essentially open to the public. Gas, electricity, telephone, and transport—all are on tap for indiscriminate public usage. When and if necessity compels us to make discriminations in public usage, there will be administrative headaches compared with which the current problem of gasoline rationing will seem quite simple.

FOREIGN experience will probably be the inevitable model if worse comes to worse. In warring European countries, and in Japan, all utility services are rationed — even telephone conversations. Civilians may not use long-distance telephone service between certain hours, and in some sections not at all, without a military permit. When the electric peak of military production can no longer tolerate the drain of civilian usage, presto, a switch is pulled and the civilian population finds itself without power for hours at a time. Unnecessary riding in common carriers is discouraged, and as a result of gasoline shortages it is commonplace to see crowded busses being pulled by teams of horses.

MAY we never come to such extremities in the United States. But we have already had a slight taste of power rationing in the Southeast. It didn't get much beyond putting out some of the street lights and more elaborate commercial lighting displays, plus an appeal for voluntary coöperation by the public. But we may have more of the same, not only in power but in other utility fields as well, before we are finished meeting the ever-increasing demands of the nation's defense effort.

HAROLD D. KOUNTZ

Who runs the railroads; management, the ICC, or the brotherhoods?

(SEE PAGE 323)

IN this issue ANDREW BARNES, Washington newspaper correspondent, gives a discussion of power shortage possibilities.

RECENTLY, the nation's foremost industrial city, Detroit, was paralyzed by a complete tie-up of its municipally owned transportation system. For days, parleys and pleadings by government mediators failed to ease the jurisdictional fight between the AFL and CIO unions which was the basis for an AFL walkout.

ABOUT two and one-half million residents of greater Detroit were forced to rely on makeshift transportation while the rival unions argued over jurisdiction of 5,500 employees of the Detroit Street Railway. Needless

to say, this exhibition of what seemed to the impartial outsider as a selfish contest for power and membership prestige did little to enhance the public esteem for the labor movement.

CITIZENS of Detroit, which until recently has been a decidedly pro-union city, have undoubtedly had a great deal to think about as they walked weary miles about their business, pedaled bicycles, cadged rides in private autos, or just gave up and sat at home.

SIGNIFICANTLY, this Detroit transit strike has been probably the first major prolonged stoppage of a vital utility service during the current emergency. Because of Detroit's position as a municipal owner and operator of its transit system, several nice questions of labor policy arise. Is it proper to permit an organized walkout by employees of a governmental subdivision engaged in a vital public service? Would the city be justified in breaking the strike by using strike breakers and repressive measures against the strikers? And what about privately owned utilities? Are they no less vital to the public service than publicly owned and operated utilities?

THE Detroit incident should emphasize the futility of trying to make one kind of a labor rule for a privately owned and operated utility and another for a publicly owned and operated utility. Citizens of one community are just as much entitled to uninterrupted utility service as the citizens of another—regardless of the incident of ownership or operation. Some form of compulsory mediation in labor disputes affecting utilities is indicated.

APROPOS of the labor problems of a utility industry, which is much more important to the nation as a whole than the Detroit street car system, is the discussion in the opening article of this issue entitled "The Stranglehold of Labor on the Railroads." HAROLD D. KOONTZ, author of this article, is at present assistant professor of economics at Colgate University, Hamilton, New York. He is a native of Ohio who was educated at Northwestern University (M.B.A., '31) and Yale (Ph.D., '35).

ALSO in this issue is the concluding instalment of the 3-part series of articles on the Arkansas Valley Authority by H. W. BLALOCK, former member of the Arkansas Department of Public Utilities, now a power consultant with the Federal Power Commission.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

A POWER company, facing a power shortage because of drought and an abnormal increase in demand for electric service because of a national defense program, was authorized by the Alabama commission to attach a temporary emergency service regulation in the form of a rider to new contracts for electric power service for industrial and large general and rural power service and for commercial service, providing that temporarily the company will supply power only when, as, and if it has the same available in excess of power previously sold, and that the company shall be the sole judge of the availability of such excess power, with the further provision that as more power becomes available such rider and similar riders will be revoked in the order in which the contracts to which they are attached were approved by the company. (See page 254.)

H. W. BLALOCK

Power production can put the Arkansas valley back on its feet.

(SEE PAGE 343)

THE various measures of value for rate-making purposes were discussed by the North Dakota Supreme Court when it entertained an appeal from a lower court judgment vacating orders reducing electric rates and increasing steam heat rates. (See page 219.)

THE meaning of the term "controlling influence," within the purview of the Holding Company Act, was clarified by the United States Circuit Court of Appeals when it reviewed an order of the Securities and Exchange Commission denying an application for an order declaring a petitioner not to be a subsidiary of another company. (See page 193.)

THE next number of this magazine will be out September 25th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193–256, from 39 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

SIDNEY HILLMAN
Associate director, Office of Production Management.

"Legislation ought not to be tried while coöperation works . . . "

FRANKLIN DELANO ROOSEVELT

"As far as I am concerned there will be no government control of news unless it be of vital military information."

LEON HENDERSON
Administrator, Office of Price Administration and Civilian Supply.

"I feel that Hitler will be licked by American production—but we can't do it by giving just one hour out of eight."

WILLIAM GREEN
President, American Federation of Labor.

"The great need of the moment is for greater and wider representation of labor in every Federal department and agency engaged in the defense program."

EDWARD C. EICHER
Chairman, Securities and Exchange Commission.

". . . it must be remembered that the operations of §11 [of Holding Company Act] do not change the location of a single nut or bolt on a utility operating property."

CARROLL B. HUNTRESS
Vice president, Republic Coal & Coke Co.

"The man on the street is not paying his tax dollars to protect a pseudo-democracy. He is not disposed to defend over here that which he is adjured to defeat over there."

H. F. MCPHAIL
Assistant chief electrical engineer, of Bureau of Reclamation.

"Hydro-power can help build the West in more ways than one. It is helping now through establishment of industries, utilization of minerals, irrigation of farms, reclamation of land, and in many other ways."

J. G. LUHRSEN
Executive secretary, Railway Labor Executives Association.

"We know that this waterway project [St. Lawrence] will divert business from the rails in very substantial tonnage, so that railroad employees will be deprived of thousands of positions and without a livelihood to follow in any substitute vocation."

EDITORIAL STATEMENT
Bergen (N. J.) Evening Record.

"The anticipated cost of the proposed [St. Lawrence] seaway is about $500,000,000, all furnished by the United States, while Canada, which pays nothing, gets 52 per cent of the traffic benefits and none of the liabilities resulting from traffic diversions from its other ports."

COLBY M. CHESTER
Chairman, General Foods Corporation.

"The system [of free interprise] can only be saved by businessmen themselves. We had better be about the job, eschewing golf, bridge, and other pleasant society, if need be, to equip ourselves to fulfill our responsibilities as the modern managers of private enterprise."

H. S. BENNION
Vice president and managing director, Edison Electric Institute.

"Interruption of an hour or even of a week or a month as to some few thousand kilowatts of capacity may be annoying or inconvenient, but it is not going to win or lose any wars. Its influence can but be trifling compared with other causes of delayed production."

WENDELL L. WILLKIE
Former president, Commonwealth & Southern Corporation.

"At this time we have, of a necessity, granted great power to a centralized government and very properly so. Now any such grant of power is fraught with danger. But as long as we can keep the press free so that the public can hear the truth, our liberties will remain intact."

EDITORIAL STATEMENT
Hartford (Conn.) Courant.

"It is nothing short of sickening to see national defense being continually used as a cloak to cover all the loose social and economic vagaries of the New Deal. If national defense is our first and most imperative business, let us attend to it without engaging in any sideshows."

C. E. GREENWOOD
Commercial director, Edison Electric Institute.

"The internal economic health of the electric utilities demands that the electrical industry does not falter in telling the civilian population, through national coördinated promotion, the benefits of electrical equipment and its utilization, whether in home, commerce, or industry."

CLAUDE R. WICKARD
Secretary of Agriculture.

"The St. Lawrence seaway will benefit American agriculture as a whole by lowering transportation charges on the things farmers sell and the things they buy. It will aid in the restoration of our foreign markets after the war. It will increase our national security in times of crisis."

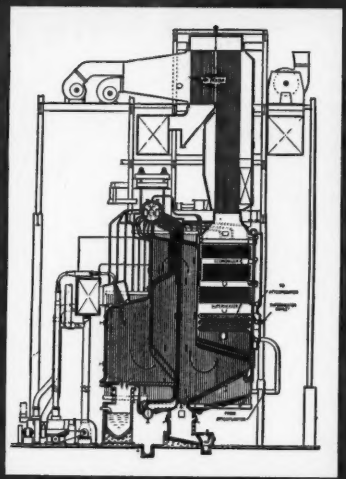
WILLIAM YANDELL ELLIOTT
Industrial consultant, Office of Production Management.

"If this country really means to defend itself and avoid the fate of those who have waited for Hitler to strike, we must make up our minds not to cripple the military arm by depriving it of man power or by tying it up with red tape and congressional resolutions as to how that man power shall be used."

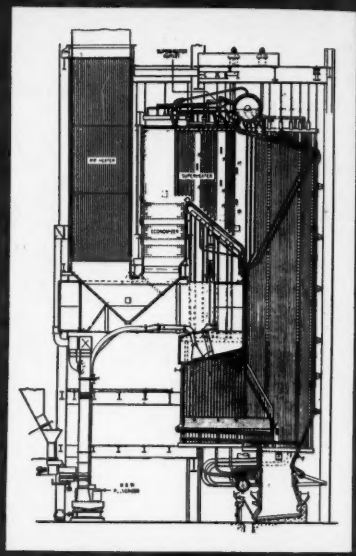
HENRY A. PALMER
Editor, Traffic World.

"There is no more important transportation question before the public than whether motor carriers pay adequately for their use of the highways as a place of business. We need an authoritative study and finding on this question by some transportation board provided by Congress, and then action based on it."

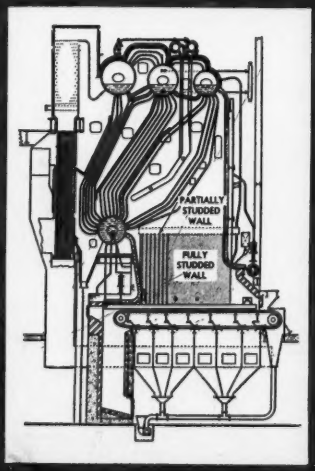
Variety in Boilers



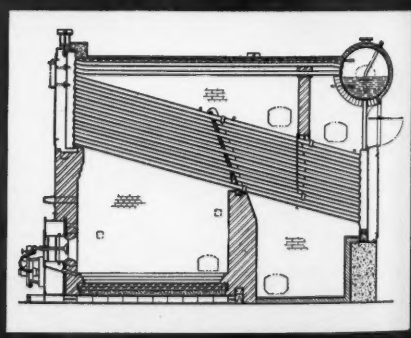
OPEN-PASS BOILER



RADIANT BOILER



STIRLING BOILER



DESIGN 2-PASS BOILER

CHEVROLET TRUCKS

LEAD THE NATION IN ECONOMICAL TRANSPORTATION

Truck operators, large and small, buy more Chevrolet trucks than any other make, year after year.

Small wonder that they are doing it *this* year! For Chevrolets for 1941 attain a new high in all-round value. They are "tops" for total dependability—engineered to haul your loads with the speed that these fast-moving days require . . . and they are priced to cost you less than any other trucks in the biggest-selling low-price field.

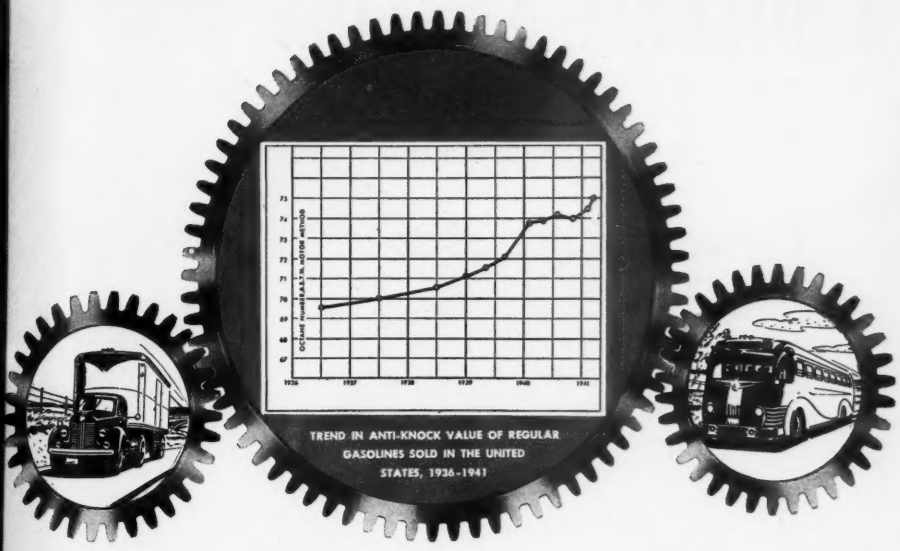
Truck operators everywhere have decided that Chevrolets are first choice for making "DELIVERIES P.D.Q."—powerfully, dependably, quickly.

To solve your delivery problems, and solve them efficiently and economically, follow this nationwide swing to Chevrolet. Your Chevrolet dealer is ready to give you a convincing demonstration, any time you say.

CHEVROLET MOTOR DIVISION, *General Motors Sales Corporation,* DETROIT, MICHIGAN

"THRIFT-CARRIERS FOR THE NATION"

This page is reserved under the **MSA PLAN** *(Manufacturers Service Agreement)*



GEAR YOUR TRUCKS AND BUSES TO TODAY'S GASOLINE QUALITY

AMERICA never had such good gasolines! Regular gasoline today has a higher anti-knock value (octane number) than ever before. Through the use of anti-knock fluids and newly developed refining methods, refiners have produced fuels which offer an opportunity to improve transportation and to lower its cost.

The chart above shows how much regular gasolines have been improved in anti-knock value—but the extra available power is of greatest value only when the engines of the user's equipment are designed and adjusted to take full advantage of these improved gasolines.

By using today's better gasolines in modern high compression engines or in older engines that have been modernized to take advantage of today's gasoline, many fleet operators have been able to reduce their costs per ton-mile or passenger-mile. For in addition to gains in mileage, operators report gains in operating speed, schedule time or payload.

Ethyl engineers would like to help you adapt your operations to today's improved gasolines. Just as they work with the automotive and petroleum industries to improve engines and fuels, so they are cooperating with commercial fleets in order that progress made in the laboratory and on the proving ground may be realized in practical operation.

For detailed information about this service, write to Fleet Division, Ethyl Gasoline Corporation, Chrysler Building, New York City.

Better and more economical transportation through

ETHYL RESEARCH *and* SERVICE

A MILLION STRANDS IN A 1″ PILE

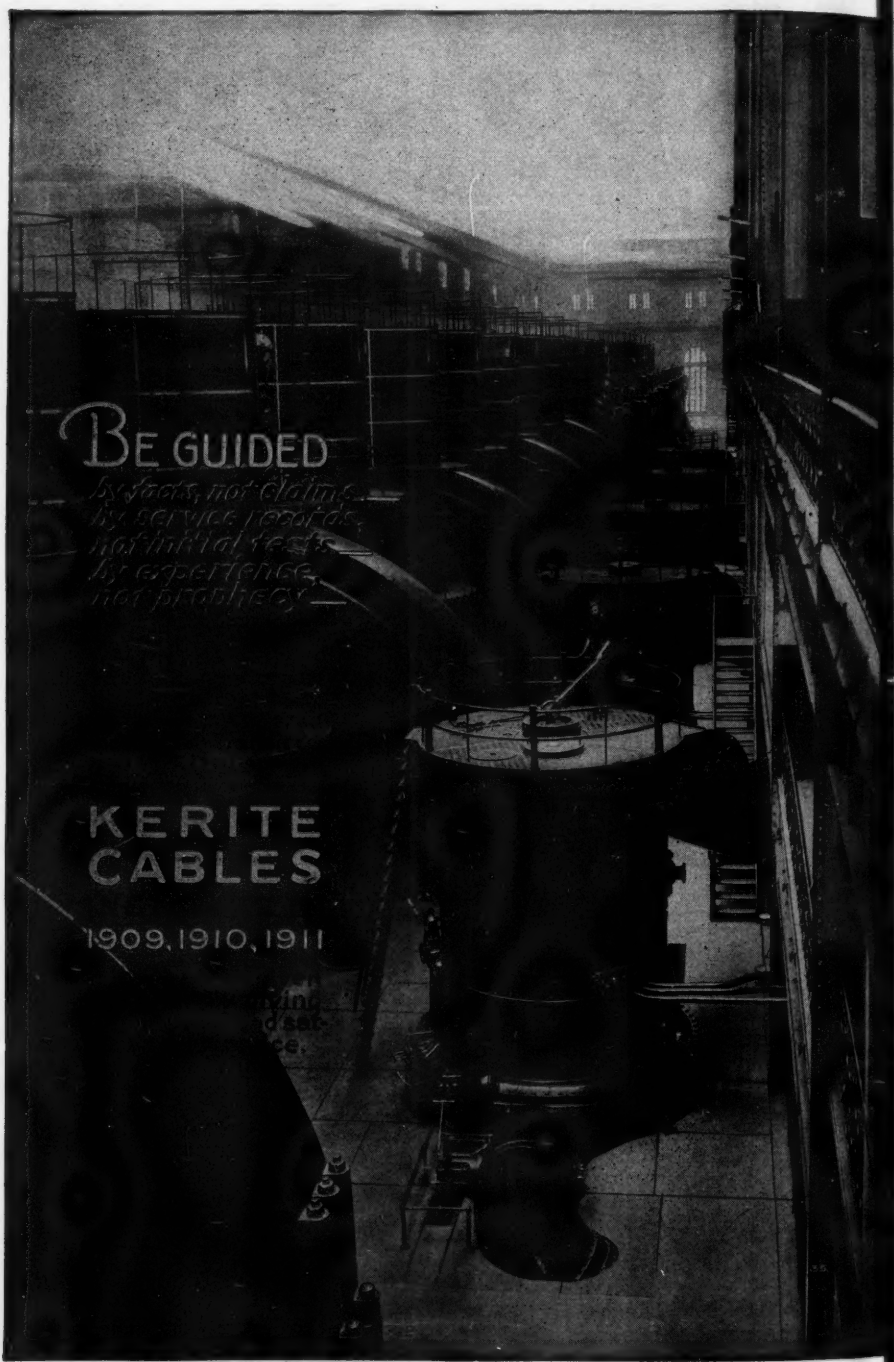
A SPACE an inch wide and an inch high will take more than 1,562,000 strands of wire used in the smallest Westinghouse watthour meters. And tiny watch-wheel shafts being made by this operator are almost as fine—to bring unmatched precision to Westinghouse meters. These meters, so carefully made, render vital service on power lines, measuring with unfailing exactness, 24 hours a day, the current that passes to your customers. Costly under measurements are thus avoided and customer good will is insured.

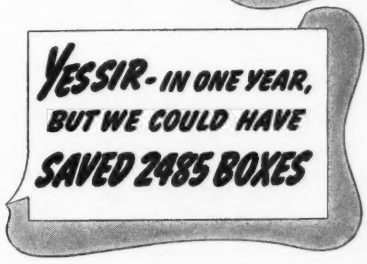
Westinghouse activities in research, in the manufacture, distribution and application of apparatus, and in promoting the use of electricity, result in better service to you and a wider use of electricity by your customers. They have been made possible and are continually encouraged by your purchases of Westinghouse apparatus.

WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, EAST PITTSBURGH, PA.

Westinghouse

ELECTRICAL PARTNER OF THE CENTRAL STATION INDUSTRY





You're right, young lady! The Egry Speed-Feed would have saved the 2485 boxes of carbon paper that went into the waste basket. The Speed-Feed converts any typewriter into a billing machine in one minute . . . steps up the output of typed forms per day 50% (even more) . . . *and eliminates the use of costly, wasteful, pre-inserted one-time carbon forms!*

Yes, a user of the Egry Speed-Feed and 50,000 five-part 8½" x 11" Egry Continuous Printed Forms per year saves 2485 boxes of carbon paper annually. In dollars and cents that saving will more than pay for the use of the Speed-Feed for a century or more! Literature on request. Demonstration in your own office without obligation. Address Dept. F-911.

EGRY SPEED-FEED

The EGRY REGISTER Company

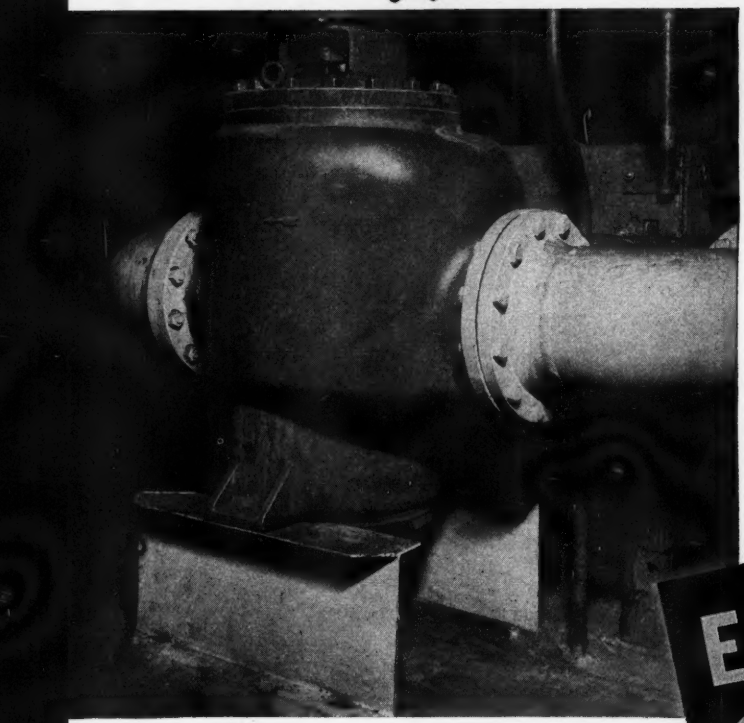
Dayton, Ohio

SALES AGENCIES IN ALL PRINCIPAL CITIES

The Egry Register Co. (Canada) Ltd., King and Dufferin Streets, Toronto, Ontario, Canada

Water, *effortlessly* clea

cools bearin for Philadelp Electric Compa



Close-up of 16-in. Elliott Self-Cleaning Strainer in the Chester Station of Philadelphia Electric Company. Another similar unit may be seen in the background. The Schuylkill Station has a 10-in. unit.

ELLIOTT *Self-cleaning* STRAINER

IN the Chester and Schuylkill Stations of this important utility, water for bearing cooling service is delivered free of all objectionable foreign particles without interruption, fuss, time out for strainer basket cleaning, or manual effort of any kind. This water passes through Elliott Self-Cleaning Strainers, which operate continuously, periodically flushing each straining section with water already strained.

The units have been in service long enough to demonstrate beyond question their dependable qualities. Their use by utilities is suggested wherever conditions require water free of fine sand, dirt or other substances.

Elliott builds a complete line of strainers for all needs. Full information for the asking.

ELLIOT COMPAN

Accessories Dept., JEANNETTE,

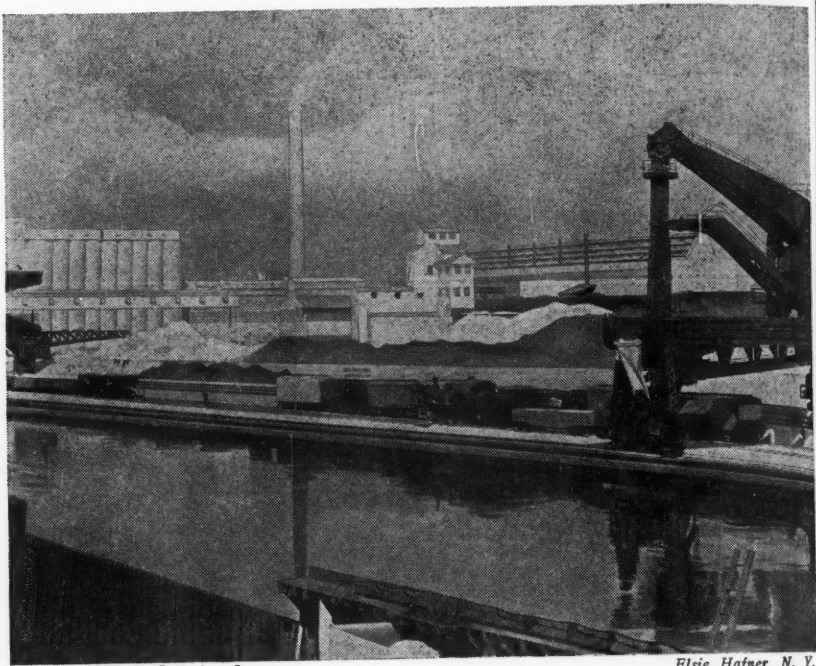
DISTRICT OFFICES IN PRINCIPAL

A-265

Utilities Almanack

SEPTEMBER

11	Th	¶ *Rocky Mountain Electrical League starts meeting, Estes Park, Colo., 1941.* ¶ *American Trade Association Executives open convention, Hershey, Pa., 1941.*
12	F	¶ *Pacific Coast Gas Association concludes meeting, Del Monte, Cal., 1941.*
13	Sa	¶ *American Transit Association will convene, Atlantic City, N. J., Sept. 27–Oct. 2, 1941.*
14	S	¶ *Electrochemical Society will hold fall meeting, Chicago, Ill., Oct. 1–4, 1941.*
15	M	¶ *West Virginia Oil and Natural Gas Association will hold convention, Clarksburg, W. V., Oct. 2, 3, 1941.*
16	Tu	¶ *Edison Electric Institute, Meter and Service Committee, will convene, Swampscott, Mass., Oct. 2, 1941.*
17	W	¶ *National Electrical Contractors Association will hold fall meeting, Houston, Tex., Oct. 6–8, 1941.*
18	Th	¶ *American Water Works Association, Rocky Mountain Section, opens convention, Santa Fe, N. M., 1941.*
19	F	¶ *National Safety Congress and Exposition will be held, Chicago, Ill., Oct. 6–10, 1941.*
20	Sa	¶ *American Society of Mechanical Engineers will convene, Louisville, Ky., Oct. 13–15, 1941.*
21	S	¶ *American Gas Association will hold annual convention, Atlantic City, N. J., Oct. 20–24, 1941.*
22	M	¶ *Illuminating Engineering Society opens convention, Atlanta, Ga., 1941.*
23	Tu	¶ *Association of Iron and Steel Engineers starts meeting, Cleveland, Ohio, 1941.* ¶ *Asso. of American Railroads, Telephone Sec., convenes, Cincinnati, Ohio, 1941.*
24	W	¶ *Indiana Electric Association opens convention, French Lick Springs, Ind., 1941.*



Courtesy of Perls Galleries. Inc. *Elsie Hafner, N. Y.*

American Landscape

From a Painting by Charles Sheeler

Public Utilities
FORTNIGHTLY

VOL. XXVIII; No. 6 SEPTEMBER 11, 1941

The Stranglehold of Labor On the Railroads

Policies which have resulted in unnecessarily high operating costs

These costs, says the author, are principally high basic wages, frozen mileage rates under the dual system of wage payment, restrictive operating rules, make-work safety legislation, and comparatively high cost of retirement benefits—resulting effect on railroad progress and on the public.

BY HAROLD D. KOONTZ

THE demand of organized labor for drastic increases in wages, countered by the move of management for modification of restrictive operating rules, has again dramatized the stranglehold which railroad labor unions have upon the American railroads. It is significant that, as soon as the railroads should experience a modest recovery in earnings after a decade of bankruptcy, labor should attempt to skim off these earnings in wage increases. In no other industry has labor been more able to get the benefit of any improvement in earnings and business efficiency than it has in the rails. In no other industry has labor more nearly approached the monopoly status enjoyed by train-operating employees or been more able to enforce measures which impede economic efficiency. For the operating unions have not only been powerful enough to obtain the highest earnings of any labor group of comparable skill, but they have been able to secure operating rules and legis-

lation which have throttled the rails in their attempts to reduce costs and to make a decent return on invested capital.

The relations of labor and management on the railroads have been regarded as ideal by many persons who measure success by labor peace. In fact, it has sometimes been suggested that, when unions in other industries become as strong and stable, similar peaceful conditions will reign in those industries. But this peace in the railroad industry has been at the expense of railroad efficiency and has arisen because management has felt that it must give in to operating employees who could strike and tie up rail transportation in the nation. This peace has meant that railroad costs have not been able to reflect the full benefits of technological and managerial improvements; that railroad managers have not had the freedom to improve service and to reduce costs and rates to meet competition; and that the best possible service cannot be furnished to shippers at the most economical rates. If the experience in the railroad industry gives any clue to what may be expected from labor monopolies which are now shaping up in other industries, the future will see the world-famous efficiency of American industry shackled in the interest of short-sighted labor policy.

For the public at large, the stranglehold of railroad labor has far more interest than the mere level of railroad wages. While monopoly wage levels increase costs, reduce return on capital, and make it difficult for railroads to obtain capital needed for improvements, other measures also impede the rails in rendering an efficient transport service. With the American nation committed to an all-out program of national defense, the public interest in having economic machinery work at its most efficient level is superior to the monopoly rights of any group in the nation.

While the railroads have made amazing strides toward better and more efficient service, much progress has been hampered by restrictive labor policies. These labor policies have resulted in six principal kinds of costly action. They are: high basic wages, frozen mileage rates under the dual system of wage payment, restrictive operating rules, make-work safety legislation, and comparatively high-cost retirement benefits.

Railroad Wage Levels

RAILROAD workers have long been among the best paid in all industry. While averages do not tell the real story, they do furnish interesting comparisons. In contrast to wages in most industries, average hourly earnings of railroad workers have been exceedingly constant over the last two decades. The depression after 1920 caused average earnings to diminish only 9 per cent and by 1929 hourly compensation had reached the post-war high of 1920. With the onslaught of the succeeding depression, average hourly earnings did not decline until the voluntary acceptance of a 10 per cent decrease in 1932. This decrease was restored early in 1935 and followed by an increase of 6 per cent in 1937 which brought average hourly earnings to the highest point in railroad history.

But, it may be asked, how do these wages compare with those elsewhere in industry? According to the Bureau of

Statistics of the Department of Labor, average hourly earnings of railway employees were 77 cents and average weekly earnings were $36.58 in February, 1941, as compared to the average of all manufacturing industries of 69 cents and $28.58, respectively. On the other hand, the hourly earnings of employees in the electric power, communication, iron and steel, automobile, construction, and mining industries were higher, but only in the automobile industry were average *weekly* earnings higher. Moreover, it should be remembered that the average of railroad employees covers a host of low-paid clerks, maintenance men, and other workers. Those workers in the railway operating departments—workers having directly to do with the running of trains—receive higher earnings.

	Average Hourly Earnings	*Average Weekly Earnings*
Passenger conductors	$1.69	$61.67
Freight conductors—through	1.29	51.82
Freight conductors—local	1.06	56.67
Passenger brakemen	1.28	42.60
Freight brakemen—through	1.05	35.78
Freight brakemen—local	.85	41.45
Passenger engineers	2.10	66.50
Freight engineers—through	1.51	58.70
Freight engineers—local	1.24	64.47
Passenger firemen	1.72	50.93
Freight firemen—through	1.17	39.83
Freight firemen—local	.95	45.73

ACCORDING to wage statistics of the Interstate Commerce Commission, workers were enjoying average earnings, not counting overtime allowances, as shown in above table.

To be sure, wages in many industries have risen since early in 1941, although not many cases have existed where rises have amounted to more than 10 per cent of the levels then existing. Yet train-service employees are currently asking for an increase of 30 per cent in their wages and unions representing other employees are asking for approximately 47 per cent more. While a material rise in wages may be justifiable for some classes of railroad workers, notably maintenance and clerical employees, neither the rise in the cost of living, the status of railroad earnings, nor the amount of comparable wages elsewhere justifies wage increases for train-service employees or nearly the amount asked for by other employees.

The significance of railroad wage rises to the financial stability of the railroads may be indicated by noting the possible effect of the present wage

¶ "THE *relations of labor and management on the railroads have been regarded as ideal by many persons who measure success by labor peace. In fact, it has sometimes been suggested that, when unions in other industries become as strong and stable, similar peaceful conditions will reign in those industries. But this peace in the railroad industry has been at the expense of railroad efficiency and has arisen because management has felt that it must give in to operating employees who could strike and tie up rail transportation in the nation.*"

increases. Should they be granted, the result would be to add at least $800,000,000 to railroad expenses. Even if only half this amount were granted, the resultant $400,000,000 added to costs may be compared to net income after fixed charges for all railroads of $191,000,000 in 1940 and an estimated net income for 1941 of about $400,000,000. In other words, by hoping to get half of what they ask, labor unions intend to wipe out net income during what promises to be the best railroad year since 1930. This would mean that the rails, with the exception of certain of the more successful roads, would be forced to get along on depression rations. It must necessarily mean also that many railroads would be unable to pay their fixed charges and that the lack of net income of many roads would impair credit standing which is now so sorely needed for national defense capital expenditures.

Cost Effects of the Dual System Of Wage Payment

For nearly a half-century train-operating employees have been paid according to a dual system. Under this system employees are paid either according to a mileage rate or according to an hourly rate, whichever gives the highest pay. For example, if the basic daily rate for a freight engineer is $9 for 100 miles or eight hours, he would get that amount as a minimum for any run or any times for which he is called to service; but if he should run 150 miles in his eight hours, he would obtain pay at 9 cents a mile, or a total of $13.50. On the other hand, should his 100-mile trip consume nine hours, he would get time-and-one-half for the overtime hours, or a total of $11.25 for the day. Similar arrangements are made for other operating employees, although the rates differ, and in the case of passenger train employees the daily mileage is larger. Thus, the standard "day" of a passenger conductor is 150 miles or seven and one-half hours and the "day" for a passenger engineer is equal to five hours' work or 100 miles.

The concept of a day's work has remained the same since the first World War. With increased train speeds, train-service employees, especially in through freight and passenger service, have been able to compress long runs into a relatively short time. For example, a conductor on a fast passenger train can actually do three basic "days' " work, in terms of mileage, in eight hours; and the engineer can do the same in five hours. Hence, although a wage rate for a basic day might seem entirely reasonable, enginemen and trainmen can easily double or triple this rate in a comfortable day's run, as measured by hours. That this system can result in unusual pay is illustrated by the exceptional case which has often been cited of engineers on western streamliners earning between $8 and $9 per hour.

To take care that operating employees do not make too much money in a month under the high hourly rates of the dual system, and to spread the work around, the labor unions have placed limits upon the number of hours certain employees can work per month. Exceptionally high-paid employees may be allowed to work only forty-three or forty-five hours per month, and to make about $400, while other employees may be permitted to

Earnings of Railroad Workers

"RAILROAD workers have long been among the best paid in all industry. While averages do not tell the real story, they do furnish interesting comparisons. In contrast to wages in most industries, average hourly earnings of railroad workers have been exceedingly constant over the last two decades. The depression after 1920 caused average earnings to diminish only 9 per cent and by 1929 hourly compensation had reached the post-war high of 1920."

work thirty or forty or more hours per week. The primary consideration is, of course, the mileage run per month so that the monthly earnings will not get too high.

No objection lies in the dual system itself. As a wage system it is simply a piece-work plan with a guaranteed hourly minimum and, as such, is entirely reasonable. The objection to the dual system is that it has facilitated the freezing of piece rates and has camouflaged the idea of a day's work. The evil lies in the constancy of miles per "day" and of mileage rates. It is as though a manufacturer had set a piece rate in 1918 and had been forced to maintain that rate irrespective of technological changes. Under the dual system with its fixed rates, much of the savings in speed, due in large part to capital expenditures for road and equipment, have been siphoned off in high labor costs.

One should not object to railroad employees earning high wages, especially those workers who have the responsibility of seeing that trains operate safely and speedily, although it should not be overlooked that many employees not riding the trains are equally responsible for the splendid transportation job of the railroads. Let engineers earn $8 to $10 a day and permit other wages to be comparatively high. But mileage rates should be pared down so that these workers will put in more hours per month for their ample wages and so that labor costs per mile may be reduced as transport is ex-

pedited. After all, the investor whose funds make capital improvements possible should not be overlooked in transport improvement.

Operating Rules and Railroad Efficiency

THE relationships of railroad managements with operating employees are defined in a system of hundreds of operating rules, some local, others national in scope. These rules define virtually every aspect of railroad employment, pay, and operation. They provide that workers on through freight trains shall not do any switching at points where yard engines are maintained unless an extra day's wages are allowed. They provide that the maintenance of yard crews cannot be given up without labor's consent, and if an established yard is discontinued, wages to yard crews must go on if any switching at all is done. Operating rules insist that freight cannot be carried in passenger trains unless the entire passenger crew gets the higher mileage rates of the freight service. Rules hold that the day's work of a passenger crew ends when trains reach the passenger terminals and an extra day's pay must be given if the crew moves the train to the freight yard or roundhouse. Other rules forbid management to call switching crews to duty except at certain times, on the penalty of an extra day's pay. When workers are called to jobs away from the home terminal, rules provide pay for time taken in "deadheading."

Operating rules define jobs and if a brakeman should take care of a train of empty cars from terminal to yard he is eligible for conductor's pay, or if a job undertaken by one kind of employee should later be found to belong in the jurisdiction of another, the latter would receive pay for what he might have done. Still other rules define the conditions upon which trains should be double-headed, the number of trainmen on a train, and the payment of bonuses to crews operating in difficult terrain.

THESE are only a sample of the numerous operating rules which have been made by agreement of railroad managements and railroad unions throughout the nation. Some of the rules have originated from the earnest desire of labor and management to come to agreement on a disputed point in operating technique or on a matter to improve safe operation. Other rules have been jammed down the throats of management by belligerent labor unions who threatened strikes in reprisal. Still other rules have been agreed to by managements who felt that to do so was cheaper than to make a wage increase. And some rules were made necessary by the exploitative policies of unfair railway managers of decades ago.

Starting out as rather informal agreements understood in the context of local conditions, these rules have been formalized and made fairly uniform by the interpretations of the National Railroad Adjustment Board, created by legislation in 1926. This board is made up of thirty-six members, eighteen representing labor unions, and eighteen representing management. It operates in four divisions, each division having charge of disputes of certain classes of employees. Under the law, any dispute in regard to an agreement which has been made must

come before the board which has power to construe the rule and to order award of back pay, reinstatement of position, or other courses of action deemed appropriate.

SINCE the board is equally bipartisan, many cases result in a deadlock. In such cases the law provides for selection of an impartial referee who casts the deciding vote. This referee is to be selected by the board if possible, but if the board cannot agree on a referee, the selection is made by the National Mediation Board. Due to the bipartisan nature of the Adjustment Board a large number of cases go to a referee, and, for the same reason, referees are invariably selected by the National Mediation Board. Because of the political character of national appointments on the latter board and the influence of organized labor in Washington, it has been held by the railroads and others that most referees selected have a pro-labor bias which makes the Adjustment Board decisions unduly favorable to labor.

It is certainly true that the National Adjustment Board has acted as a medium for organized labor to press for the formal interpretation of operating rules and that the awards made have been extremely favorable to labor. However, most of this favorable treatment may be traced to the operating rules themselves, since they generally are favorable to workers and have been called—not without adequate reason—"feather-bed rules." Some of the advantageous treatment has arisen from the tendency of the board and its referees to interpret a rule upon precedent rather than to place it in its local setting. Thus the Lehigh Valley had an understanding with its employees that road crews should move passenger trains from the Pennsylvania Terminal to near-by yards, but the National Adjustment Board referee, reasoning upon the basis of precedent, awarded $250,000 for five years' back pay to a small group of men on the ground that the day's work ended at the terminal.

STILL other favorable treatment has arisen from the very fact that claims for awards naturally come from workers and that labor unions are able to "get something" for their constituents by watching for minor infractions of agreements. Moreover, it cannot be doubted that in some cases referees favorable to labor are selected and biased decisions do result.

The work of the Adjustment Board has resulted in many awards which shock the common sense of persons outside of railroading. The Lehigh Valley award for full day's pay to

❦

¶ "ONE *should not object to railroad employees earning high wages, especially those workers who have the responsibility of seeing that trains operate safely and speedily, although it should not be overlooked that many employees not riding the trains are equally responsible for the splendid transportation jobs of the railroads. Let engineers earn $8 to $10 a day and permit other wages to be comparatively high.*"

workers running a train a few miles from terminal yard is a case at point. The award of an extra day's pay to road crews for a trifling amount of switching plus a day's pay to the switch crew which did not do the switching is another. In one such case, six years' back pay was awarded to a yard crew which had done no work in an abolished yard, although road crews had already been paid extra days' pay for incidental switching. Another railroad paid out $60,000 to employees for extra days' pay at overtime rates because it started yard crews fifteen minutes ahead of the starting time which the unions claimed an obscure rule provided. Countless other cases could be mentioned which explain, in part, why railroads in 1940 paid $149,000,000 for time not worked and $14,000,000 in special allowances out of a total of $568,000,000 in train and engine service wages.

INTERESTINGLY enough, railroad managements are attempting to obtain modification of the operating rules as a counter demand to the employees' request for higher wages. Carriers have recently joined together to eliminate restrictive rules, including the regulation of starting time of yard employees, the penalty payments and limitations on yard crews doing switching, the penalty payments for handling freight in passenger trains, the union rules limiting monthly mileages of workers, the requirement that yard crews move trains from terminals to yards, and other penalties for work done in a regularly compensated day.

These changes are long overdue and should be pressed by the carriers to the utmost of their ability. With the present emphasis upon efficiency and sacrifice as prerequisites for national defense, no better time could be had for such an attack. Should the managements of the railroads insist upon the change in rules and at the same time prove that a railroad employee who puts in a reasonable number of hours each day can still earn handsome wages, public support should be forthcoming. Furthermore, it seems to be an opportune time for effective bargaining with labor. Some wage increases seem inevitable and with railroad employment picking up, the depression-bred philosophy of making jobs might be overcome.

Make-work Safety Legislation

To some extent the railroads have been the victims of make-work safety legislation. While no one would deny the advisability of having trains adequately manned, many of the full-crew laws now on the books of twenty states set up rigid requirements out of line with needs on certain trains. Most of these laws require a minimum of five men on a train, although some laws place it at four or six. In the case of some of the shorter trains safe operation demands fewer men than those prescribed by law and the crew requirements have sometimes eliminated much of the savings of putting on one- and two-car gas-rail or similar trains.

In four states, legislation has been passed to limit the length of freight and passenger trains, the usual maximum being 14 cars for passenger service and 70 cars for freight service. In spite of the attempts by labor unions to increase the number of such laws on state statute books and to have Federal legislation passed, the obviously

National Railroad Adjustment Board

"THIS board is made up of thirty-six members, eighteen representing labor unions, and eighteen representing management. It operates in four divisions, each division having charge of disputes of certain classes of employees. Under the law, any dispute in regard to an agreement which has been made must come before the board which has power to construe the rule and to order award of back pay, reinstatement of position, or other courses of action deemed appropriate."

make-work characteristics and microscopic safety aspect of this kind of law have so far thwarted such attempts.

Happily, most of the safety legislation which has been passed by state and Federal legislators is honestly and fairly designed to protect the life and limb of railway passengers and workers and the safe transport of freight. But the full-crew and maximum-length laws are too often subterfuges for making work for railway employees and for hanging the cost on railroad operation.

Labor Restrictions on Efficient Combination

STUDENTS of the transportation problem in the United States are practically unanimously agreed that the transportation system could be operated at lower cost and with better service if it could be more unified. While this observation applies to all forms of transport and supports the advisability of coördination or combination of one mode with another, the need for elimination of costly duplications and competitive services in the railroad industry is obvious. If the railroad industry is to build up an adequate and efficient system to serve the nation, and if private ownership is to survive, the costs of wasteful competition should be avoided.

Nevertheless, under the pressure of labor lobbies, impediments have been placed in the way of efficient railroad combination. The Emergency Transportation Act of 1933 directed the Coördinator of Transportation to investigate possibilities of economy through coördination or combination and to make such orders as necessary to put these projects into effect. But the same law prohibited the coördinator to make any such order if the effect would be to reduce the volume of railroad

employment below that of May, 1933, or to place any employee in a worse condition with respect to his job.

THEN, in the face of national legislation which might have been more severe, railroad managements made a "voluntary" agreement with railroad labor in 1936 providing for dismissal compensation for those employees displaced by a combination project. Besides reimbursement to employees who should have to move or be placed in a lesser paid position as the result of a combination, the agreement provided for monthly payments equal to 60 per cent of an employee's previous actual wage for periods of six to sixty months, depending upon the service record of the worker, or lump sums aggregating three to twelve months' full pay for any displaced worker.

In spite of these liberal arrangements for displaced workers, additional impediments have been placed in the way of railroad combination. The Interstate Commerce Commission, over the dissent of several of its members, began in 1938 to insist upon protection of labor economically harmed by combination before it would approve the move as being "in the public interest." In many of the cases, the commission has gone farther than to specify the compensation requirements of the 1936 agreement. But in other cases the commission has flatly refused to allow the combination at all, primarily on the ground that too many employees would be adversely affected.

THE capstone to interference with efficient combination came with the Transportation Act of 1940. Upon the insistence of labor union leaders, this law was made to contain the provision that, for four years from the effective date of any combination order approved by the Interstate Commerce Commission, no railway employee should be placed in a worse position with respect to pay or employment. The only exception permitted is that workers with a service record of less than four years may only be guaranteed such immunity from progress for a period equal to their past record.

The displacement of workers as the result of progress and higher operating efficiency is a social problem which probably should not be dodged. The way, of course, to deal with the problem is through a real national social security policy, and, to a very large extent, present unemployment insurance laws take care of such displacement. It is patently unfair to heap special costs on one industry and not upon others. It is especially unwise to impede railroad efficiency by such costs when this important industry is one which can gain so much from efficient combination. Where would other industries be now if they had been forced to maintain employment and wages of individual employees on the same level for four years after combination?

The present is not only no time to place such special limitations upon railroad efficiency, but the present is also a time in which railroad combination could be effected without much loss to total employment. Railroad and other employment has been increasing and it would seem that workers displaced at one point might, through the national placement office system, be put to work elsewhere. The present at least merits a moratorium on displacement prohibitions. If savings could be effected in

railroad costs thereby, one could expect the enlarged business of a more efficient railroad system to increase the number of railroad jobs materially.

Higher Costs of Railroad Pensions

In noting the cost-raising effects of labor union policy, mention should be made of the cost of the national railroad pension scheme which is higher than the cost to other industries operating under the Social Security Act. Due to the strength of railroad union lobbies in Washington, a special railroad retirement law has been put into effect for railroad employees. This law provides for much higher retirement benefits to railroad employees than the Social Security Act provides for other workers. The cost of the railroad retirement system is likewise greater. The railroad tax rate, half of which is paid by the employee and half by the employer, was 5½ per cent from 1937 to 1940, is presently 6 per cent, and is slated to rise to 7½ per cent in 1949. This may be compared to the current rate of 2 per cent applicable to payrolls under the Social Security Act.

An ample railroad pension system is clearly needed. Many roads had pension systems before the government plan was adopted. Since seniority rules of labor policy mean that older workers can insist upon the best jobs, satisfactory pensions are desirable in order to obtain the retirement of these employees at a reasonable age. But it is questionable as to whether taxing the railroad industry for pensions more than the levies against other industries is either fair or good social security policy.

Public Interest in Labor Strangleholds

Although most businesses have been making large profits as the result of the defense program stimulus to production, the railroad industry is still, on the whole, earning only approximately 4 per cent on its investment. When it is considered that this is the best percentage for a decade and that railroads operating a third of the total nation's mileage have been undergoing reorganization due to bankruptcy, one can see that the railroads are still not among America's prosperous industries. One of the reasons for this poor financial showing is the inability of the railroads to capitalize upon increased efficiency and lower costs. And one of the principal reasons for this inability has been the various labor policies which have impeded low per-unit cost of service, improved and more flexible handling of traffic, and economical combination of carriers.

Railroad efficiency has improved

¶ "In *four states, legislation has been passed to limit the length of freight and passenger trains, the usual maximum being 14 cars for passenger service and 70 cars for freight service. In spite of the attempts by labor unions to increase the number of such laws on state statute books and to have Federal legislation passed, the obviously make-work characteristics and microscopic safety aspect of this kind of law have so far thwarted such attempts.*"

markedly in the last two decades, but labor costs have increased so as to absorb much of the higher productivity of capital investment. A recent study of wages and productivity of industrial labor shows that the real hourly wages (*i. e.,* dollar earnings modified by changes in the cost of living) of railroad workers have advanced as fast as the output per man-hour, while in manufacturing and coal mining the output per man-hour has progressed at a greater rate.[1] And it should be noted that such a study does not show how certain labor policies have placed brakes upon doing the maximum of railroad transportation service.

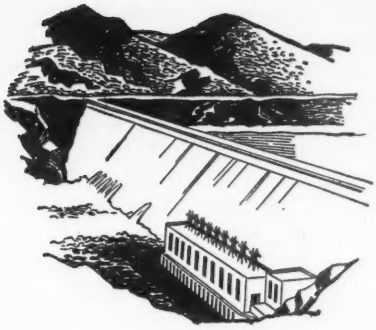
WHAT do these policies mean to interested public groups? For the investor they mean an uncertain or nonexistent return and an unwillingness to embark capital funds in the railroad business. To the mass of railroad workers, these policies mean that the railroads must forego business which lower costs and flexible service would gain, that all possible methods to save labor must be adopted, and that fewer jobs must ordinarily result. The reason, of course, why these results do not influence labor union policy is that under the rules of seniority the "older heads" retain any minimum of jobs and earn top pay; and these older men are the ones in control of railroad unions, especially those in which operating employees are organized. The rank-and-file of operating employees dare not oppose the union policies if they would because union membership is an important attribute to success in obtaining train-service jobs. Moreover, many of the workers outside of the operating services who see their pay being trimmed down and their jobs lost by high-cost tactics of operating unions have so far been unable to wield the influence which their brother employees have.

But the public interest in removing labor impediments to railroad efficiency is the greatest of all. The railroads are still the principal transportation agency of the nation. Railroad costs influence the costs which producers throughout the nation must bear and have an exceedingly important effect upon the prices which consumers pay. Railroad service is of paramount importance to the smooth and economical operation of businesses of every kind. Certainly such broad public contact makes the problem of efficient railroad transportation of great social importance.

NO better time than the present has existed for dealing with threats to efficient operation of business. The nation is impressed with the need for maximum production at lowest cost as a necessary element of adequate defense.

The days of make-work policies and "overproduction" economics are at least temporarily forgotten. If it can be widely understood that a nation cannot do its best in maintaining its standard of living and building a military machine unless it leaves no possibilities for greater efficiency untried, labor policies which strangle maximum low-cost production can be modified in the railroad industry. And perhaps they can be avoided in those other American businesses in which organized labor has recently obtained such strong power.

[1] Bowden, Witt, "Wages and Productivity of Industrial Labor," 51 *Monthly Labor Review,* 517, 531 (September, 1940).



The Pinch for Power

The establishment of a power unit within OPM viewed as an encouraging approach. The electric power industry's problems during the emergency.

By ANDREW BARNES

THE increasingly vital importance of adequate supplies of power for national defense production has at long last received official recognition from the Federal government.

Until recently the government directed its full energies and entire attention to other problems—the problems of raw materials, priorities, transformation of industry from peace-time to war-time production, the procurement of machine tools, the provision for adequate supplies of labor and for settlement of national defense strikes, the development of more modern weapons, the conscription and training of an adequate military force.

These problems, it may be conceded, were vital. But while they were being met and solved, the problem of national defense power supplies, hardly less important, was shoved into the background until in this field, too, the emergency called for action.

That action has come, and it promises for the utilities a solution of many of their problems which were complicated by the national defense program and its system of priorities.

The creation of a special power unit in the Office of Production Management carries with it the assurance for the utilities that their problems will be given official study and consideration, their needs met in so far as they can be within the framework of the national defense production schedules. The creation of this unit puts the utilities on a par, for example, with the automobile industry, which is being called upon for more and still more production for defense.

COINCIDENTAL with the creation of the OPM power unit, the Federal Power Commission appointed a special liaison agency to coöperate with OPM and to coördinate the efforts and plans

of these two government bureaus, in order to achieve the maximum output of power in the minimum of time and effort.

The start is an encouraging one. The OPM power unit is under the direction of a highly competent young man, J. A. ("Cap") Krug, until recently the manager of TVA power production. Formerly with the Wisconsin Public Service Commission, later with the Federal Communications Commission during its investigation of the American Telephone and Telegraph Company, then with the TVA, Mr. Krug has a practical knowledge of utility problems. His experience is all from the field of regulation, except in so far as the TVA power managership gives practical experience; and his sympathies have largely developed for public power. But—and this is important—he is a student of both public and private power problems, and has a wide knowledge of the utility systems of the nation. Wherever Krug has served, his record has been one to encourage confidence in him in his managership of the OPM power unit.

The Federal Power Commission liaison committee is likewise of a high type. The three FPC men charged with this work are William S. Youngman, the general counsel; George H. Buck, the engineer in charge of power supply; and Walter E. Caine, commission rate expert.

The utilities are fortunate in the selection of these men, in the creation of the OPM unit. Secretary of Interior Harold L. Ickes, given the job of coördinating petroleum supplies and production, waged an intense behind-the-scenes fight to take under his jurisdiction the job of planning and directing production of electric energy. Ickes' argument, according to authentic reports, was that oil, power, and coal naturally dovetailed with each other as sources of manufacturing energy; that the job of planning for one entailed consideration of all the others; and that management of oil naturally fitted into the management of power and coal supplies. According to reports, Ickes almost won his argument until OPM stepped in and established its power unit.

WHILE Krug and the FPC committee have a thorough knowledge of utility problems, Ickes' knowledge of the power industry can at best be said to be elementary, gained primarily from debating the public *versus* private power issue, and from the public power work of the Federal Bureau of Reclamation in his department. This would hardly equip an official for wrestling with a problem of the magnitude that marks the job of planning for adequate supplies of power to keep national defense industries humming.

The establishment of the OPM power unit in no way implies any lack of confidence in the ability of the utilities to do their defense job, or any criticism of their performance to date. The utilities have been carrying out expansion programs that put off the pinch for power until long after the pinch had been felt in many other fields. Even now the existing supplies of power are fairly adequate to handle the production for defense at its current level, and that level is many times higher than a year ago. It is the future which has aroused official worries.

Production for defense has increased rapidly, and the defense pro-

gram has been doubled and redoubled —this vast expansion serving to create the impending lack of electric energy. It is no small accomplishment for the utilities to have been able to carry the constantly expanding load up to the present.

Virtually every industrial plant in America that contributes even remotely to defense has stepped up its operations to a 24-hour, 3-shift day; hundreds of them have expanded to a point that staggers the imagination—the aircraft plants, for example; some 800 huge new plants have been put into operation or are being built. The load on the nation's utilities has been expanded commensurately.

THAT the utilities have been able to meet every requirement up to date speaks volumes for their private accomplishments. Vast amounts of government funds have been loaned to other industries coöperating in the national defense program; plants have been built with government capital and leased out for private operation; and other emergency remedies adopted long before it was found necessary to take government action to accelerate or expand the efforts of the utilities.

Because it has become apparent that a shortage of power probably impends in 1942, 1943, and 1944, the government is taking the leadership through OPM and the FPC to insure that power will be available. By that time, in 1943, the government's expenditures for defense are expected to amount to the staggering sum of *$3,000,000,000* per month. The industrial machine will be whirling at solar speed, turning out weapons.

As one small, but important example: The nation now produces some 700,000,000 pounds of aluminum per year, and the production of aluminum requires great supplies of power. This is to be increased to 1,600,000,000 pounds per year, and government plans are now formulating for the construction of eight big new aluminum plants.

This being the situation, the power industry itself could not reasonably be expected to provide from its own funds the gigantic expansion that will be required. Nor could it be expected, operating individually, to correlate the effort so that the expansion will fit accurately the increase of defense production, supplying exactly the power needed in precisely those areas in which the need will arise.

ONLY the Office of Production Management has the production charts and plans, the picture of where production will boom and power will be required. There can be no haphazard guesses, or lack of planning and correlation in a program of this magnitude and importance. The program cannot break down anywhere along the line.

❦

¶ "THE *creation of a special power unit in the Office of Production Management carries with it the assurance for the utilities that their problems will be given official study and consideration, their needs met in so far as they can be within the framework of the national defense production schedules.*"

Consequently, the Federal Power Commission is attacking the problem from several angles, and the utilities have assured the government of their coöperation.

The industrial East and Southeast have experienced a current, but not critical, shortage of power. This has been due to drought which seriously lowered the existing storage of water for hydroelectric power. The FPC acted to meet what it termed to be an actual emergency in this area.

First, the FPC recommended that the use of electrical energy be curtailed by the utilities, individuals, and municipalities throughout North and South Carolina, Virginia, Georgia, Alabama, Mississippi, Florida, and Tennessee. In Georgia and Alabama, users of electrical energy voluntarily agreed to reduce their consumption of energy by 33 per cent in order to make available a larger supply of power for defense production.

Second, the commission established three power pools and ordered utilities to establish interconnections that will result in creation of what amounts to a vast grid system not unlike the English power grid, tapping power-generating facilities from Texas to the District of Columbia, and from Florida to Illinois. This huge power pool the commission described as "the greatest coöperative effort ever entered into to alleviate a power emergency." Thus, where the utilities of one state may be overburdened, where they have dipped to the bottom of their reserve energy and still are unable to meet the requirements despite any voluntary or enforced savings in nondefense usage of power, energy will be siphoned in from the utilities of another state which may not be so hard pressed for their output.

Mr. Krug has estimated that in this manner 1,000,000 kilowatts of energy, a temporary supply, has been dug up to accelerate the production of aluminum.

BUT these measures do not solve the entire problem. Nor will these measures, coupled with President Roosevelt's plan for national daylight saving to conserve electrical energy provide an adequate solution.

The increasing demand for power shows that. The TVA power requirements were up 30 per cent in May, over the same month last year, and in other cases the demands on utilities have been of even greater magnitude.

Interconnections, pools, saving programs will not meet the emergency; they will not add the facilities to generate some 11,000,000 kilowatts that must be added to the current capacity if the full requirements of the national defense program are to be met on an adequate scale. The only solution, according to Mr. Krug, is in the construction of more generating capacity.

The Federal Power Commission has presented such a program to President Roosevelt, and his formal approval is expected. The program will extend over five years, and, briefly, is as follows:

1. The Federal government will assume responsibility for ordering and financing the construction of steam and hydro turbine generators on a scale that will keep the manufacturers operating at full capacity over the next five years—about 2,500,000 kilowatts of steam and 1,000,000 kilowatts of hydro generating units per year.

2. The financing of these orders will be undertaken through the Reconstruction Finance Corporation; and both private and public utilities, according to present plans, will be given oppor-

Utilities Have Done a Good Job to Date

"THE establishment of the OPM power unit in no way implies any lack of confidence in the ability of the utilities to do their defense job, or any criticism of their performance to date. The utilities have been carrying out expansion programs that put off the pinch for power until long after the pinch had been felt in many other fields."

tunity to lease or buy generating units as they require them.

3. The government, through the TVA, the Bureau of Reclamation, and Army Engineers, will construct reservoirs and install approximately 1,000,000 kilowatts of hydro generating units a year.

4. All phases of the program will be carried out under the general supervision of the FPC, subject to the OPM's general direction in accordance with defense production.

THE FPC estimates that probably $200,000,000 per year will be required to keep the production of generating units at full capacity, another $100,000,000 a year for steam stations (expecting this to come from private sources), and finally $170,000,000 a year from government funds for the development of hydro projects.

This is an ambitious program. Even when it is operating, according to FPC experts, it will be necessary to effect a 30 per cent displacement of the normal loads of the utilities, in order to supply the 20,000,000 kilowatts the experts believe will be necessary for defense production at the peak effort.

What does all this mean? It means several things, all highly important to the utilities.

It means that they will not be called upon to attempt a staggering task on their own. They will have financial and expert help from the government.

It means that they will not be starved for equipment. If they need a generator, it is not going to be snatched away from them and given elsewhere under the priorities system. If they need cables, they will get them. The same goes for other equipment.

It means that they will have a government agency to which they can take their problems, assured in advance that

they will get a sympathetic hearing.

It means that they will not be required to work "in the dark" in trying to do their part of the national defense job. Through the power unit, they can get from OPM accurate estimates of the national defense production their localities and industries will be expected to turn out in the future, and be able to gauge their own efforts accordingly.

It means that they can take up with OPM and the FPC any financial or operating problems, and work them out to the best advantage of the defense effort.

It means that if a sudden emergency load is thrust upon them, beyond their capacity to provide energy, through this government agency they can obtain reserve power from other systems, help as it were in meeting the emergency.

NATURALLY, when utilities are straining every effort and coöperating to the hilt in meeting the power emergency, it is only reasonable that the *public* should want to coöperate in solving the national defense power shortage. But coöperation, to be effective if not actually wasteful and harmful, must be *intelligent*. Recently (on August 2nd) the consumer division of the Office of Price Administration and Civilian Supply issued an appeal for conservation of power in the home, listing ten ways to save electricity.

These ten suggestions advocated sparing use of lights, basement lights, electric stoves, other electrical appliances, careful regulation of water heaters and refrigerators, and meticulous care of all electrical equipment so as to obtain the maximum efficient performance.

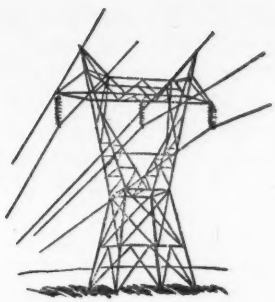
That, however, does not meet the problem. The problem of power is one of loads. The peak loads of the particular utility are the controlling factor.

If a local utility has a slack demand for power at 11 A. M., it will not aid the national defense to keep such a short-time appliance as a toaster turned off at that hour, or a washing machine silent, or a radio. The problem is actually one of timing the mass use of power so as to avoid interference as much as possible with the national defense plant operations.

Complete control of mass use of power along lines that would make civilian consumption "mesh" exactly with industrial demands would take Gestapo methods. It wouldn't be practical. But some good undoubtedly can be done if there is intelligent supervision and if there is local necessity for it.

Where there *is* need for intelligent public coöperation with the national defense, local utilities are in the best position to give advice. Utility companies are coöperating with the government.

They know that if the pinch for power should become critical, government is fully ready to see that we save electrical energy. For the realization has come that without an adequate supply of power for national defense, there will be a wholly inadequate supply of defense material when and if the supreme emergency arises.



The Arkansas Valley Authority

Part III. The Power Question

(In Parts I and II the author has shown a need for water control on the four rivers in the AVA region; has discussed the scientific approach to the problem which comprises extensive watershed treatment supplemented by headwater reservoirs, levees, and channel clearance of the lower reaches of the rivers; has analyzed the various AVA proposals, the work under way in the region, and the economic status and resources of the region.)

By H. W. BLALOCK
FORMER MEMBER, ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

THE best available information relative to power requirements and supply in the region is contained in a current monthly survey published by the Federal Power Commission. The information used by the Federal Power Commission in these reports is supplied by the companies themselves. These reports divide the United States into forty-eight areas which are based upon markets served by integrated power companies. By combining seven of these areas, Nos. 25, 32, 33, 34, 36, 37, and 39, practically all of the area to be served by the proposed AVA is included. Some area outside of the AVA region is also included but that is of little consequence since electric power knows no regional bounds.

These reports indicate that there are 1,582,000 kilowatts of installed capacity, of which 1,559,000 kilowatts can be termed dependable capacity. After allowing for reserve capacity there remain 1,324,000 kilowatts of assured capacity. The net assured capacity is the dependable capacity plus net firm purchases minus required reserves. It is the capacity which should be related to probable future loads in order to determine the adequacy of available electric supply facilities. The combined annual peak demands on the various utility systems of the area in 1940 were 1,212,000 kilowatts. In other words, this means that the electric systems of the region were barely able to take care of their peak loads without encroaching upon the necessary reserves. The Federal Power Commission's report estimates that the net assured capacity

to serve the annual peak loads in this region at the end of the year 1942 will be 1,474,000 kilowatts. This capacity is based upon existing facilities and commitments for future installation, including firm power contracts. The estimated peak load for the year 1942, provided the defense program proceeds according to present plans, will be 1,523,000 kilowatts. In other words, if the power systems in the region were fully integrated, which they are not, there would be an over-all shortage of 50,000 kilowatts which must be supplied out of reserves. If the tempo of the defense program increases or if the region gets a normal part of necessary defense industries, the shortage of power in the region will be more acute.

THE Federal Power Commission study [Table II] indicates that certain areas within the region will have a shortage of power in the very near future. These areas are Area 25, which comprises a large part of Arkansas, Louisiana, and Mississippi; Area 36, which comprises the western part of Texas and Oklahoma; and Area 37, which comprises central and north Texas and parts of Oklahoma, Arkansas, and Louisiana. This study indicates that there is not a surplus of power at the present time in the AVA region and also indicates that there is an increasing need for large blocks of power such as could be furnished by the power program of the AVA electric projects.

A study of the electric rates in the region indicates that there is a large power market that has not as yet been tapped because the rates are not at present low enough to attract that power market. Table III (page 347) indicates that the cost of 100 kilowatt hours for residential service is $2.50 in Chattanooga, a TVA town. The cost of the same amount of service in similar cities of the AVA region ranges from $3.80 in Denver to $4.23 in Wichita. In Chattanooga 1,500 kilowatt hours of electric energy served with a 12-kilowatt demand for commercial light service costs $27.50 per month. The cost of the same type of service ranges from $46.25 in Dallas to $70.75 in Little Rock. In Chattanooga 6,000 kilowatts served on a 30-kilowatt demand for commercial service costs $90 a month. The same service in the AVA region costs from $130.50 in Amarillo to $180.60 in Fort Worth.

Reduction in the cost of electric service in the AVA region to the TVA rates would materially increase the power demands placed upon the electric facilities presently installed in the region. It is very doubtful that those facilities could take care of the increased load that would be incurred by such reduction in the electric rates.

WHAT would happen to the private utility companies operating in the region if the AVA was created? As soon as the AVA established its yardstick rates the private utilities would, of necessity, have to reduce their rates to something comparable to the yardstick rates, particularly where the AVA had power available. Their next step would be to put on sales promotional campaigns to increase their volume of sales to hold up their gross and net income. That was the procedure followed in the TVA region. The people would immediately enjoy a widespread reduction in rates and begin to enjoy the full benefits of electricity. The private com-

panies, no doubt, would suffer a decline in net revenue for a year or two, but after that their net position would improve if the experience in the TVA region should be duplicated. Values of utility securities would decline and financing new outlays would be more difficult for the private utilities. The people would not suffer for want of power because the AVA would, through its program, supply the added power needed. In the long run the increased wealth and income created by the attraction of industry, the strengthening of agriculture, would make for a more abundant life for everybody, including the private utilities.

States' Rights and the AVA

THE issue of states' rights *versus* Federal domination has been raised, particularly by people in Colorado representing the interests of irrigation in the upper Arkansas river area. A regional meeting was called by Governor Ralph Carr of Colorado. This meeting was attended by western governors and water specialists and was held in Denver on Friday, February 7th. As a result of this meeting, seven objections to the Ellis-Miller-Caraway AVA proposal were set forth, as follows:

1. The AVA bill provides for exclusive Federal control of the planning, constructing, and operation.
2. It prevents states from entering into compacts without consent of the authority.
3. It appears to subject judicial water rights' controversies to the courts where the principal office of the authority may be located.
4. It empowers the proposed authority to investigate, construct, and operate projects without regard to other agencies of the Federal government.
5. It empowers the authority to issue bonds for many purposes.
6. It vacates certain authorizations already made by the Congress.
7. It is based on the principle that the authority shall control navigation, development of power, and control of floods, thereby subordinating irrigation development.

THE committee recommended to the western Congressmen that they

TABLE II

Area No.	*Total Installed Capacity in Kw.*	*Estimated Peak Demand for 1942 Kw.**	*Net Assured Capacity to Serve Annual Peak Loads End 1942 Kw.***
Area No. 25	343,087	360,000	308,500
Area No. 32	154,638	150,000	164,271
Area No. 33	283,437	250,000	268,485
Area No. 34	177,620	125,000	128,870
Area No. 36	105,203	72,000	69,015
Area No. 37	462,208	520,000	490,035
Area No. 39	56,000	46,000	44,500
	1,582,193	1,523,000	1,473,676

* Requirements which should be provided for on the assumption *that the already authorized defense program proceeds according to present plans.*

** Based on existing facilities and commitments for future installation, including firm power contracts.

oppose this measure and all similar measures; that appropriate steps be taken to coördinate activities of existing Federal agencies; that Congress consider an amendment to the National Reclamation Act of 1902 so it may function outside the western area; and that all Federal legislation relating to the control, regulation, and utilization of water in the interstate river basins should recognize the principles of equitable coöperation between Federal and state governments.

It is not known to the author that public opinion has crystallized in Colorado relative to the AVA bill. It is reasonable to presume that Senator Johnson's substitute bill, previously discussed, meets the objections of the irrigation interests to the original proposal. If this presumption is correct, it is likely that the interests in the upper Arkansas river basin can be satisfied by a compromise bill, after full hearings are had before the House and Senate committees.

According to information obtained from the U. S. Engineers, the Arkansas river has the characteristics of two rivers. These engineers state that the waters of the upper Arkansas river basin west of the one-hundredth meridian, or thereabouts, never reach the lower part of the river. These waters are used entirely for irrigation in that region. The principal tributaries of the Arkansas river, both on the north and the south sides, flow into the Arkansas river east of the one-hundredth meridian. It is reasonable to assume that control of floods, stabilization of stream flow, and proper utilization of the waters in the lower basin are not dependent upon the waters of the upper Arkansas river basin.

IT has been contended by some of the spokesmen for the irrigation region that under the AVA some of their water now used for irrigation purposes would be diverted into the lower river basin for navigation purposes. The position of the Federal government in this matter has been well stated by Congressman Clyde T. Ellis of Arkansas, one of the authors of the original AVA proposal, in a speech broadcast Monday, March 17, 1941. His remarks were as follows:

> The water rights of many western states are older than the states themselves. Water rights are property rights, and the due process clause of the Constitution specifically guarantees that no person shall be deprived of his property "without due process of law."
>
> Alarmists have alleged that the waters of the upper Arkansas are desired by the people of the lower Arkansas for power and navigation. The answer is implicit in geography. If water were needed in the lower Arkansas for these purposes, it would be needed most in the dry season and in the dry season the Arkansas river is practically dry a few hundred miles east of Colorado.
>
> There are no suitable power sites on the main stem of the flat, meandering Arkansas, and the tributaries of the lower Arkansas, properly controlled, would furnish sufficient water, if that were the only problem, for navigation to Tulsa, Oklahoma, or above.
>
> President Roosevelt, in several conferences on this measure, has made it plain to western congressional leaders that every water right will be fully protected and they have been requested to write their own ticket on irrigation. Not a drop of water that is needed for irrigation in the upper valleys should ever be permitted to waste itself down the rivers to the sea. Water is life to the upper valleys but it is death to the lower valleys.

THIS much can be said in fairness to all people of the region, that the question of controlled development and utilization of these rivers is a national question and well beyond the powers of the states to accomplish the task. In the first place, the states are not financially able to undertake the huge expenditures that are necessary for the development.

AVA As Part of Defense

"THE AVA [Arkansas Valley Authority] can be considered . . . as a part of total defense because defense does not stop with tanks, ships, guns, and airplanes. To be sure these front line implements of war should take priority over all other defense. Defense includes every phase of our national life—military, political, social, and economic. We may not see 'peace in our time' unless we utilize efficiently every resource that we have."

In the second place, the states cannot solve the problem working independently. Regardless of the willingness or ability of the state of Arkansas to spend any sum of money on the Arkansas river, she could not solve the flood problem on the Arkansas because the control of the Arkansas river depends upon construction on the headwaters in Oklahoma and other states.

Practically, it is impossible to work out compacts between the various states involved. It is difficult enough to get two states to enter into a compact, much less the eight states that are involved in this development, and if compact agreements could be worked out, certainly some of the states would not be able to participate in financing the necessary projects. Solution of the problem by compact is simply "not in the cards." If solution of the problem were possible by state compacts, I am still of the opinion that it is a national problem and should be solved by a Federal agency.

The Tax Situation

IT will be contended by many, particularly the power companies, that the passage of the AVA bill will bring about a great loss of tax revenue to the various states, counties, municipalities, and local school districts. Both of the AVA proposals provide that the authority shall pay each year 5 per cent of the gross proceeds derived from the sale of power and water to the states in which the corporation carries on its operations. This payment is in lieu of taxes on the property which it builds or acquires. The payment each year shall be apportioned among the states on the basis of the percentage of the value of property within each state. It will be pointed out by the adversaries of the bill that the little red schoolhouse

on the hill will have to close its doors, institutions for the aged and blind, and the poor and the needy, will no longer be able to operate; that old-age pensions will decline; municipalities will be embarrassed financially; and, in general, public finances will suffer a real calamity.

It is true that many tax problems and readjustments will have to be faced by local people and the authority. In some counties the most productive property will be covered by reservoirs. A real problem of maintaining county government and schools will naturally follow. Municipalities will acquire privately owned electric properties and reduce the taxable revenue of the municipality unless adjustments are made. These problems will continue to arise but they can and will be solved in the course of time.

WHEN we look at the project in a true perspective, these immediate local tax problems fade into insignificance. The whole purpose of the authority is to increase the wealth and income of the region. Within a generation after its creation agriculture will be on a new footing. This waste of soil, the abandonment of farms, the destruction and loss by floods, idleness of land due to lack of irrigation or drainage, will be ended. With a prosperous, stable agriculture the tax base and tax revenues will be materially increased. The abundance of cheap power in the region will make possible an industrialization program that will add millions of dollars in new industrial plants, will put thousands of laborers to work, and will increase the industrial income of the region many times over what it is at the present time.

It is not unreasonable to believe that the wealth and income of the region will be increased within a generation to the point where the tax revenues will be increased many fold over what they are at the present without any change in the taxable rates. Certainly we should not let our eyes be blinded by temporary adjustments that must be made to take care of local tax situations when such a long-run possibility lies before us.

THERE has been much criticism of the TVA yardstick for power rates. It was claimed at first that TVA could not sell power at its published rates and then it was charged that the allocation of costs to power was not correct. More recently it is dismissed with the idea that the Federal government can do those things which private industry cannot.

The AVA has the same general provisions relative to the yardstick of power rates. The bill provides that the board shall make thorough investigation of the cost or value of each dam or steam plant for the purpose of allocating such cost among the various purposes served by the improvement, such as navigation, flood control, irrigation, power development, and other types of development. It provides that costs of facilities having a value for one purpose shall be allocated to that purpose. Costs of facilities having a joint use shall be equitably allocated among such purposes, as the board may determine necessary.

The board shall file its cost study by January 1, 1945, with Congress, showing the allocation of costs. Based upon these costs the board shall keep complete accounts of its costs of generation,

transmission, and distribution of electric energy, according to the uniform system of accounts prescribed by the Federal Power Commission. In this way it is believed that the true cost of producing and distributing electric power will be made available to the public and will be a yardstick for comparison with private electric rates.

THE allocation of cost is a technical accounting problem and will be subject to criticisms or differences of opinion by persons competent to have such opinions.

The methods followed by the TVA have been criticized and no doubt the methods followed by the AVA will be subject to the same criticism. The usual claim is that too little costs are allocated to power or not enough costs to the other multiple purposes of the projects. Only time will prove or disprove the methods that have been or may be used.

Should the AVA Bill Be Passed And When?

Two important questions remain. Should the AVA bill be passed and should it be passed now? The passage of the AVA bill would concentrate in one Federal agency or corporation the work that is now being done by numerous Federal agencies. It is reasonable to assume that these agencies would not like to give up their prerogatives in this work. For example, the U. S. Engineers have made a great many studies of these streams and have many dam and reservoir projects under way. It is assumed the President would transfer these projects to the AVA and plans for work in the future would be made by the technical staff of the AVA. Just what the work of the U. S. Engineers in the region would be in the future is not clear. It is assumed that most of their work in the region would be taken over by the AVA. Why replace the U.S. Engineers with the AVA? But

TABLE III

Cities	*Rank among 212 Cities for 100 Kw. Hr. Residential Service*	*Cost 100 Kw. Hr. per Month Residential Service Monthly*	*Cost of 1,500 Kw. Hr., 12 Kw. Demand Commercial Light Service Monthly*	*Cost of 6,000 Kw. Hr., 30 Kw. Demand Commercial Power Service Monthly*
AVA Region				
Denver	101	$3.80	$66.50	$138.00
Dallas	118	3.92	46.25	147.39
Ft. Worth	122	3.96	59.84	180.60
Shreveport	123	4.00	51.50	139.00
Oklahoma City	127	4.08	57.83	170.50
Little Rock	129	4.10	70.75	162.80
Amarillo	133	4.18	46.88	130.50
Tulsa	134	4.20	52.50	158.00
Wichita	141	4.23	63.81	152.25
Outside AVA (Lowest Residential)				
Tacoma*	1	1.70	17.50	61.50
Chattanooga**	2	2.50	27.50	90.00
Cincinnati	2	2.50	53.10	166.50

* Municipally owned.
** TVA power supplied.

who will administer the projects after completion? Who will operate the power plants, the irrigation projects, locks, and dams, etc.? This would be a new field for the U.S. Engineers. Congress has not yet established a power policy, so the question of who will operate the projects is still a matter to be determined by Congress.

The work of the Department of Agriculture under the Flood Control Act of 1936 is restricted to watershed treatment, to prevent soil erosion and excessive run-off. There are several agencies of this department doing very fine work. The Soil Conservation Service is engaged in upstream flood-control work, reforestation, individual farm soil erosion control practices, and special soil erosion control projects that directly aid flood control. The CCC, the AAA, the FSA, the Forest Service, and other Federal agencies are also engaged in action programs on the land that aid in conservation and flood control.

THE Department of the Interior, on public lands under its administration, is engaged in conservation work. In addition to the Federal agencies there are state and local agencies engaged in similar work. The colleges of agriculture with their experiment stations and extension workers are engaged in educational programs that contribute much to a general understanding of conservation needs.

Would the AVA take the place of all these agencies or would it be an agency that would integrate the work that is now being done by a number of forces? It is not quite clear just what the function of these existing agencies of the Federal government would be in a regional AVA plan. The AVA would cut through and cut across their work. It is inconceivable that the AVA would supplant these agencies. The proposed bill provides for complete coöperation between them and the AVA. It might be claimed that the AVA could dominate the work of these agencies. I hardly think that will follow. I am convinced that there is a great need for an agency such as the AVA to work with these existing agencies, to integrate and coördinate the work for efficiency, and to achieve the over-all results desired.

PROBLEMS will arise. Jealousy and personal pride are still human attributes. It will be the task of those responsible for the AVA program to establish policies that will accomplish the desired goal, to coöperate with all other agencies engaged in similar work to the fullest extent, and to work closely with the people of the region.

Secondly, it can be contended that the AVA is sound in principle but due to the national emergency it should be shelved until the emergency is passed. The President has indicated that he is anxious to have a backlog of projects ready to begin, to take up the slack when the emergency is passed. Unless the emergency is prolonged beyond present expectations it will be necessary for Congress to pass the AVA bill this year so that its projects can be ready. If the bill is passed during the next twelve months and the AVA is set up July 1, 1942, it would be October 15, 1943, before it could get organized and make sufficient studies to submit its first plan for projects to be begun in the fiscal year beginning July, 1944. Such projects as are now under construction or completed could be assigned to it when

it had sufficient organization to assume the responsibility. If at July 1, 1944, the emergency is still with us, the projects could wait for the passing of the emergency. This would give added time for continued study for the proper development of the region.

It is also quite likely that the emergency may continue much longer than we now anticipate due to a quick peace in Europe or our involvement. If so, we may need very badly the electric power plants that could be built by the AVA.

The AVA can be considered also as a part of total defense because defense does not stop with tanks, ships, guns, and airplanes. To be sure these front-line implements of war should take priority over all other defense. Defense includes every phase of our national life —military, political, social, and economic. We may not see "peace in our time" unless we utilize efficiently every resource that we have. If we allow our resources to be wasted, our people will become impoverished and helpless. Our ability to arm ourselves externally with military power lies within us. To withstand a long period of military preparation for the waging of a war of freedom will require a strong internal economy. It is desirable that the economically weak sections of the country be strengthened in order that the whole might be strong.

With the AVA strengthening the economic and social fortifications of this large section of the country, it will be in a better position to pay a larger share of the costs of national defense. The social and economic fabric of the country must be strengthened to withstand the repercussions which must inevitably follow. The AVA will be a definite step in this direction. It should be remembered that the "Grapes of Wrath" people add nothing to the economic or social stability of a country either in time of emergency or after it passes.

Totalitarian *versus* Democratic Engineering

"I AM *proud of the fact that the largest, the most costly structure ever built by man is on the American continent —the Grand Coulee dam; I am proud that the greatest bridge ever thrown across a barrier in all the centuries of bridge building is an American accomplishment—the span from San Francisco to Oakland City. Much is made of the draining of the Pontian marshes near Rome as evidence of the superior efficiency of another system. Fine as is that accomplishment, the land reclamation jobs of our democracy, this 'decadent, senile democracy,' make that seem puny in comparison. The Pontian marshes affect 187,000 acres, Central Valley more than ten times as much, Grand Coulee more than six times as much. I have no apologies to make to anyone that we do things in a big way.*"

—DAVID E. LILIENTHAL,
Director, Tennessee Valley Authority.

Wire and Wireless Communication

PROPOSED intrastate telephone rate reductions which would save $64,500 to $125,000 a year for subscribers were discussed by members of the Arkansas Department of Public Utilities and telephone company representatives last month.

Reductions conforming to interstate reductions ordered by the Federal Communications Commission would effect a saving of $112,500 for Southwestern Bell Telephone Company subscribers and $12,500 for independent companies' subscribers, Chairman Ben E. Carter said.

* * * *

A PANEL of three Federal conciliators in Washington on August 22nd reviewed the recent dispute between the Association of Communications Equipment Workers (independent) in an effort to eliminate the threatened national strike of telephone installation men. As a result, an agreement was reached on August 27th whereby the union gained a 6-cents-an-hour wage increase and the right to bargain for its members. The union waived its demand for job security of its members.

* * * *

EMPLOYEES of the American-owned Mexican Telegraph & Telephone Company went on strike at noon August 21st, paralyzing half of Mexico's telephone service. Last-minute pleas from the Federal Labor Board failed to prevent the walkout. The workers were said to be seeking a new contract with increased wages.

The strike affected 1,500 employees of the company, who were supported by the Federation of Electrical Workers. The employees demanded wage increases of from 25 to 35 per cent on the basis of recent toll increases approved by the government. The company maintained that employees were not entitled to increases until expiration of their present contract in March, 1942.

Although the strike seriously crippled Mexico's telephone service, it did not paralyze it entirely, as it did not extend immediately to the Ericsson Telephone Company, which is Swedish-controlled.

* * * *

EARLY in September the FCC was scheduled to release its requirements for Continuing Property Record Accounting under the Uniform System of Accounts for Telephone Companies. The matter had been under joint deliberation for over two years by the FCC and the accounting committee of the National Association of Railroad and Utilities Commissioners. Preliminary drafts had been submitted to the Bell system and the United States Independent Telephone Association for their comments.

An attempt by the independent industry to obtain a classification which would distinguish between large and small Class A and B telephone companies, exempting the smaller companies from the

burden of detailed accounting, was apparently unavailing.

* * * *

FOLLOWING congressional action extending the training period of draftees to two and one-half years, the New York Telephone Company has revised its benefit insurance policies with respect to these men to cover the entire thirty months of statutory conscription. According to a study made by the American Management Association, it is expected that most leading industrial companies will continue group insurance for their employees called to service, where it is already in effect.

* * * *

COMMISSIONER Richard J. Beamish of the Pennsylvania Public Utility Commission is pressing for early action on his proposal to have the FCC order the Bell system to cut rates for off-peak, long-distance calls by soldiers. In a recent letter to Commissioner Walker of the FCC, Commissioner Beamish discussed objections that had been raised by telephone officials (of the AT&T and the Pennsylvania Bell Telephone Company) to the adoption of the Beamish proposal. He added that he was unwilling that there should be further delay in the disposition of the matter, stating:

> Brigadier General Alexander B. Surrels in his discussion of the need for such reduction made plain the attitude of the War Department. He added to my original suggestion for a period of reduction in off-peak toll rates beginning Saturday at one o'clock and continuing until midnight Sunday, a further reduction period on weekday nights of one hour, from nine to ten o'clock. General Surrels' recommendation was clear and explicit.

Mr. Beamish pointed out that there were a considerable number of pay station telephones already installed or proposed to be installed in such Army encampments as Indiantown, Pennsylvania, which were not fully utilized during off-peak periods and could easily handle any additional traffic that would be attracted by the cut rate. For the same reason the Pennsylvania regulator did not think that there would be any difficulty about new equipment or extensions. As to the legal objection based on discrimination, Commissioner Beamish's letter to Commissioner Walker added:

> I am enclosing herewith copies of discrimination clauses in the Federal Communications Act, the Interstate Commerce Commission Act, and the Pennsylvania Public Utility Law. American Telephone and Telegraph and Bell Telephone practice discrimination in rates in numerous instances without let or hindrance when they give special rates to their own employees, to doctors, to hospitals, to fire companies, and to numerous other bodies. The Interstate Commerce Commission grants discriminatory low rates to men in uniform. The Pennsylvania Public Utility Commission takes discriminatory action every week to further national defense. The three laws quoted have almost identical words prohibiting "unreasonable preference" in the Pennsylvania law; "unreasonable discrimination" in the Federal Communications Commission Act; and "unreasonable preferance" in the Interstate Commerce Act. Certainly a reasonable rate to more than a million and a half men in training for the national defense is not an unreasonable discrimination.

COMMISSIONER Beamish concluded that if prompt action was not forthcoming on his proposal by the Bell system and the FCC, he would move for action by the Pennsylvania commission with respect to intrastate long-distance rates during off-peak hours on calls by soldiers from camps.

He also proposed to move for a study of Bell system revenues and costs, to file a formal complaint with the FCC, and even to place the matter before "every member of the United States Senate and every member of the House of Representatives." The last-named proposal was said to have been the suggestion of Chairman Fly of the FCC.

* * * *

CHAIRMAN James L. Fly of the Federal Communications Commission told the Senate Finance Committee last month that it was "very dubious" whether a tax on radio station and network operations should be retained in the $3,200,000,000 tax bill. Fly estimated the proposed levy would yield about $4,500,-

TABLE I

CLASS A AND CLASS B TELEPHONE COMPANIES

(Class A—Companies having average annual operating revenues exceeding $100,000. Class B—Companies having average annual operating revenues exceeding $50,000, but not more than $100,000.)

Comparison between effective state systems of accounts and systems governing carriers subject to FCC jurisdiction					
Coincides with system effective January 1, 1937		*Substantially like system effective January 1, 1937*	*Coincides with system in effect prior to Jan. 1, 1937*	*Uses system of its own design*	*No system prescribed*
(a)		*(b)*	*(c)*	*(d)*	*(e)*
Alabama	Minnesota	California	Vermont	Georgia[3]	Arizona
Colorado	Missouri	Kansas			Arkansas[4]
Connecticut	Montana	Nebraska			Louisiana
District of Columbia	New Jersey	New York			Maine[5]
	New Mexico	Virginia			Mississippi
Florida	North Carolina	Washington			Nevada
Hawaii	North Dakota	West Virginia			New Hampshire
Idaho	Ohio[2]	Wisconsin			Puerto Rico
Illinois[1]	Oklahoma				Rhode Island[5]
Indiana	Oregon				Tennessee
Kentucky	Pennsylvania				Wyoming[5]
Maryland	South Carolina				
Massachusetts	South Dakota				
Michigan	Utah				
Total	(27)	(8)	(1)	(1)	(11)

[1] The system is applicable only to Bell system companies but is under consideration for use by other companies.

[2] The system is applicable only to companies subject to the jurisdiction of the Federal Communications Commission, other companies being permitted to continue the use of a system prescribed prior to January 1, 1937.

[3] Prescribed prior to issuance of the effective FCC system.

[4] Adoption of FCC system is pending.

[5] Companies report to the state commissions of these states, utilizing FCC annual report form.

Note A—The commissions of two states, Iowa and Texas, have no jurisdiction over telephone companies.

Note B—Delaware has no utilities commission.

000. The schedule passed by the House would levy 5 per cent on income between $100,000 and $500,000, 10 per cent between $500,000 and $1,000,000, and 15 per cent above that figure.

Responding to a question from Senator James J. Davis, Republican of Pennsylvania, Fly said the levy on radio stations might eventually lead to a tax on newspaper advertising. He said newspapers were receiving a "heavy subsidy" from the government by being allowed to send papers through the mails at second class rates.

The radio industry, he said, already is shouldering "burdensome" duties in connection with the defense program and will be expected to do even more in the future. The tax itself, Fly added, would touch only a small number of the 256 stations estimated by the Treasury to be subject to it.

Federal tax collections in the 1941 fiscal year reached a peace-time record of $7,370,108,377.

John B. Haggerty, president of the International Allied Printing Trades Association, on August 21st urged a dou-

TABLE II

CLASS C TELEPHONE COMPANIES

(Companies having average annual operating revenues exceeding $25,000 but not exceeding $50,000.)

Comparison between effective state systems of accounts and systems governing carriers subject to FCC jurisdiction				
Coincides with system effective January 1, 1939	*Substantially like system effective January 1, 1939*	*Coincides with system in effect prior to January 1, 1939*	*Uses system of its own design*	*No system prescribed*
(a)	*(b)*	*(c)*	*(d)*	*(e)*
Colorado	New York	Alabama[2]	California	Arizona
Connecticut[1]		Kansas	Georgia	Arkansas
Florida		Michigan	Maine	District of Columbia[4]
Idaho		Missouri	Maryland	Hawaii[4]
Indiana		Ohio	Minnesota[3]	Illinois
Massachusetts		Pennsylvania	Nebraska	Kentucky
New Jersey[1]		Washington[2]	Oregon	Louisiana
North Carolina			South Dakota	Mississippi
Oklahoma			Utah[3]	Montana
South Carolina[1]			Vermont[3]	Nevada
			Wisconsin[3]	New Hampshire
				New Mexico
				North Dakota
				Puerto Rico[4]
				Rhode Island[4]
				Tennessee
				Virginia
				West Virginia
				Wyoming
Total (10)	(1)	(7)	(11)	(19)

[1] Coincides with FCC system applicable to companies of higher classification.
[2] Adoption of FCC system is pending.
[3] Prescribed prior to issuance of the effective FCC system.
[4] No Class C companies located in these jurisdictions.

Note—The system prescribed by California is an abridgment of the FCC system applicable to companies of higher classification.

See also Notes A and B under Table I.

bling of the proposed tax on radio broadcasting. Mr. Haggerty asserted that $20,000,000 a year allowed to advertising agencies in extra rebates and discounts was available for taxes.

Doubling of the proposed tax, he contended, would work no hardship on the networks or the broadcasters.

* * * *

THE FCC has prepared a summarization of responses received from state utility commissions (and similar regulatory bodies) to a questionnaire relating to uniform systems of accounts prescribed by them for the use of telephone companies. These responses, all of which were received on or before April 12, 1941, indicate a continuation of the trend toward uniformity in the accounting requirements prescribed by Federal and state authorities.

Data applicable to Class A and Class B companies are summarized in Table I and those applicable to Class C companies are shown in Table II.

Financial News and Comment

By OWEN ELY

Utility Earnings Somewhat Better Than Anticipated

IT is difficult to appraise the current trend of utility earnings because of variations in handling tax adjustments. Tax accruals sometimes produce startling results: For example, Public Service of New Jersey, one of the few companies to publish monthly net earnings, reported only $701,120 net income in June, a decline of 68 per cent from last year, while in July net income amounted to $1,285,973, a gain of nearly 8 per cent over last year. The unfavorable June figures were due to inclusion of a retroactive charge of $1,124,765 for the first five months, to provide for an anticipated rise in the normal income tax rate from 24 per cent to 30 per cent. Based on the June figures, it looks as though the increased tax load in 1941 would cost stockholders about 77 cents per share, the total estimated amount being equivalent to $2.57 per share.

On the other hand, a few companies which do refunding this year may be able to cut down their taxes considerably through charge-offs of redemption premiums, etc.; for example, last year Indianapolis Power & Light reported a Federal income tax of only $230,000 as compared with $533,472 in 1939.

Most utility companies have, it is thought, included in their June quarter figures a retroactive adjustment for the March quarter; hence the June quarter figures naturally made a bad showing. Making allowance for this factor, the following summary of available quarterly earnings (amount available for common, except where otherwise indicated) is not too discouraging:

Declines from Same Period Last Year:

American Gas & Electric	9%
American Water Works	7
Boston Edison	3
Consolidated Edison	12
Consol. Gas of Balt.	7
Electric P. & L. (1st pref.)	8(a)
Federal Light & Traction	12
National Power & Light	16(b)
Niagara Hudson	7
United Gas Improvement	28
Brooklyn Union Gas	21
Columbia Gas & Electric	27
El Paso Natural Gas	19

(a) Quarter ended April.
(b) Quarter ended May.

Gains Compared with Same Period Last Year:

Commonwealth Edison	12%
Commonwealth & Southern (Pfd.)	23
Detroit Edison	11(a)
North American Co.	14
Southern Cal. Edison	4
Lone Star Gas	28
Peoples Gas, Light & Coke	45
American Tel. & Tel.	22(b)
General Telephone	10
Western Union	64

(a) Gain for twelve months ended July (quarterly reports not available but would presumably show a larger gain).
(b) Quarter ended May.

Excluding the three communications companies, all of which are making a favorable showing, 7 electric and gas companies showed gains as compared with 13 which reported declines in earnings.

WHILE the majority of the companies have probably "taken their licking" on the increase in normal taxes, few if any have yet sought to adjust earnings for excess profits taxes. But it is quite possible that, if certain provisions of the House tax bill are preserved

in the final act, the utilities may find themselves confronted with some year-end tax additions. In the invested capital method, the rate of allowable earnings (ceiling) is fixed at 8 per cent only on the first $5,000,000 and at 7 per cent thereafter. Moreover, the excess profits tax is now to be applied against the balance of earnings *before* deduction of the normal tax rather than *after*. A third innovation is that a company must pay 10 per cent of the difference between the taxable income as figured on the average earnings basis, and the income as figured by the invested capital. (The Senate wants to discard this, however.)

Because of these possible year-end adjustments as well as the gradually increasing burden of the 30 per cent normal tax and higher costs elsewhere, Standard & Poor's now tentatively estimates the following trend of utility earnings (as compiled for about three-quarters of the industry):

12 mos. ended 12/31/41	$418,000,000
12 mos. ended 3/31/41	423,000,000
12 mos. ended 6/30/41	418,000,000
12 mos. ended 9/30/41	410,000,000 est.
12 mos. ended 12/31/41	396,000,000 est.

Standard's estimate of a decline of about 5 per cent in the year's net earnings (which would be larger after allowances for preferred dividends) compares with its earlier estimate of a 12 per cent decline (FORTNIGHTLY, June 5th, page 741).

While hurt by the rising tide of taxes, the utilities have been favored by administration efforts to hold down commodity prices. Farm prices have increased some 30 per cent over the past year, but coal is up only about 8 per cent, copper about 4 per cent, building materials 9 per cent, chemicals 3 per cent, oil products 20 per cent, steel 2 per cent, paint 5 per cent, cement 1 per cent, paper 6 per cent. Thus commodity costs for utilities have probably increased only about 5 to 10 per cent; taxes are probably up about 15-20 per cent; wages possibly 5-10 per cent. During the other war price controls were less efficient and the trend was somewhat different: Farm prices in July, 1917, were nearly 70 per cent over the previous year, while non-farm products had gained over 40 per cent, bituminous coal having advanced 160 per cent. (It reached far higher levels in 1921.) Unless present trends show a remarkable change, the utilities seem fairly well protected against the severe increases in material costs which occurred after our entry into the first World War. The greater problem now lies in taxes, depreciation rates, and other governmental regulations.

Competitive Bidding Tests Get under Way

AFTER a summer recess of some weeks, the new issue market is now preparing for a fall campaign. Last spring's rather inconclusive tests for the new competitive bidding system will now be augmented by the results of bidding for the $30,000,000 Wisconsin Power & Light, to be followed by several other pending issues. Companies which hope to finance during the balance of the year, if they can obtain a "green light" from the SEC, include Duquesne Light, Northern States Power, Florida Power & Light, Oklahoma Gas & Electric, Virginia Public Service, Public Service of New Hampshire, Pacific Gas and Electric, and Potomac Edison. Including the Wisconsin issue, these refunding operations might aggregate some $350,000,000. There are several other large issues in the background, such as Columbia Gas and United Gas, which for the present seem stymied by SEC objections.

Bidding on the Wisconsin Power & Light, and on several other issues which were to be put up for bids after Labor Day, may help determine one point of considerable interest to the utilities—whether insurance companies, which have been allowed to enter the ranks of competitive bidders along with the distributing houses, will seek to monopolize the available offerings. The insurance companies seem very partial to high-grade utility bonds, nearly one-quarter

of their investments thus far in 1941 (including open-market purchases) having been placed in this class of security. Of the two bond issues sold thus far by competitive bids, one (New York State Electric & Gas) was taken in its entirety by an insurance company.

The utility companies are particularly anxious to place their offerings through distributing houses, even though a percentage of sales would still go indirectly to the institutions. They have their eye on some future day when interest rates will be much higher than at present, and bonds can be bought in the open market for sinking fund or other retirement at substantial discounts from the original sale price, thus helping to offset the future cost of refunding these issues. The institutions, on the other hand, will doubtless be glad to acquire entire issues, which means that there will be no quoted market and that they may not have to write down the book value of these bonds as interest rates advance.

The recent delays—due to competitive bidding, SEC investigations, etc.—may prove somewhat costly to the utilities, for the bond market now appears to be definitely on the down grade. While institutional buyers doubtless have large accumulated funds due to the meagerness of recent offerings, as illustrated by the oversubscription of the Standard Oil of California issues, three or four large offerings in as many weeks might easily sate the current institutional demand.

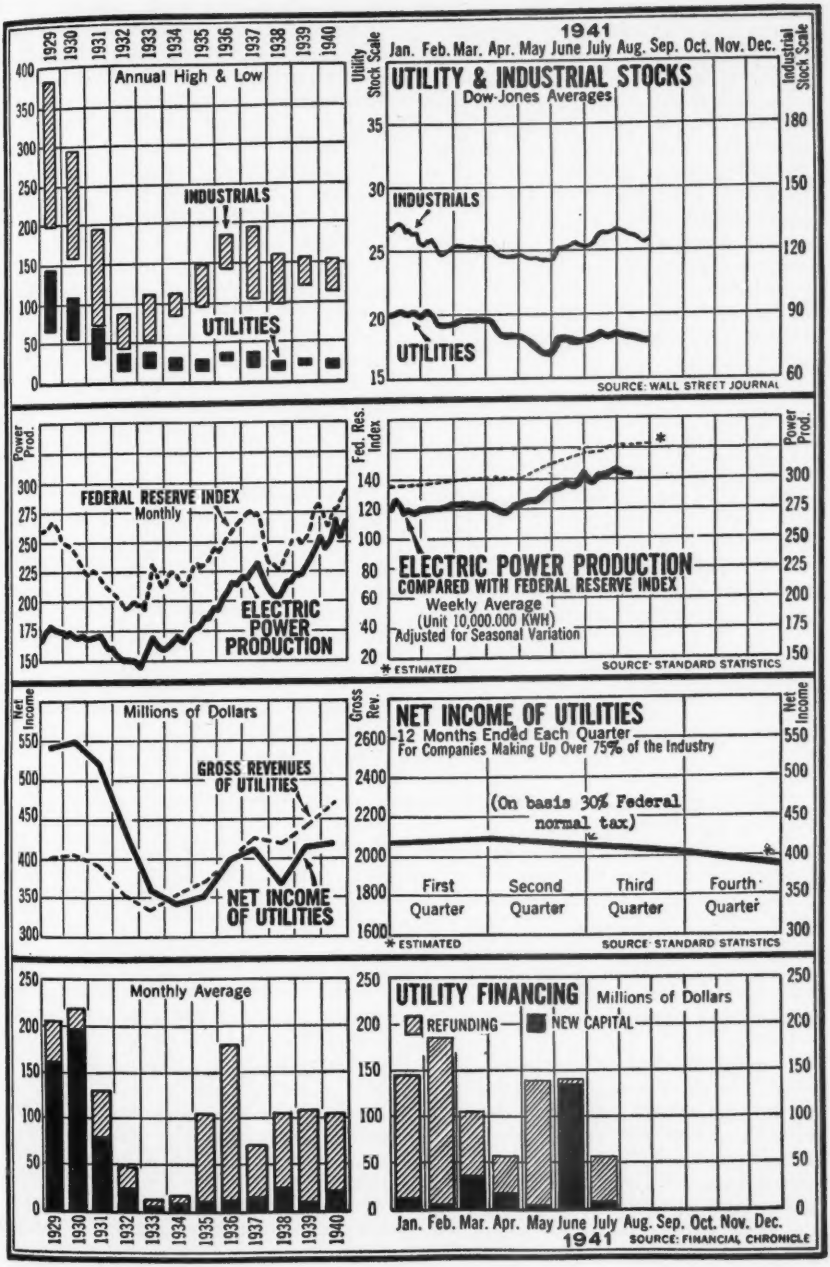
For a long time many authorities have marveled at the superb control over interest rates by Washington, but now it remains to be seen whether that control can remain effective under the stress of the defense program. Excess reserves are now declining rapidly, we no longer have a big inflow of gold, and commercial loans continue their rapid advance. The Dow-Jones bond average showed an almost unbroken (though slow) decline during August, and Treasury issues declined about 1-2 points from the year's highs. The municipal bond market dropped only slightly during August and continues near its peak levels, but this is probably due to the declining supply of new issues (with pending restrictions on municipal improvements in favor of defense activities), as well as the present campaign of the Federal government against tax exemption.

While the current decline in the bond market has not reached any serious proportions, it seems likely to persist, and possibly gather momentum later in the year. Hence utilities with large refunding programs should make every effort to expedite the sale of their offerings.

Utility Stocks Pledged under British Loan from RFC

WHEN the RFC made its recent $425,000,000 loan to Great Britain, a little less than $500,000,000 market value of British security holdings in this

	Price About	*Est. Total Valuation*
Bonds		
$1,250,000 Cities Service 5s	88	$1,100,000
350,000 Cities Service P. & L. 5½s	98	344,000
2,750,000 American & Foreign Pr. 5s	61	1,680,000
Preferred Stocks		
150,000 shs. Electric P. & L. $6	31	4,650,000
50,000 shs. Commonwealth & Southern $6	59	3,480,000
19,000 shs. Columbia G. & E. $6	74	1,403,000
6,000 shs. Arkansas P. & L. $7	89	534,000
Common Stocks		
24,000 shs. Public Service of N. J.	22	530,000
11,000 shs. Consolidated Gas of Balt.	59	650,000
70,000 shs. American Tel. & Tel.	152	10,620,000
Total market value, about		$24,991,000


Annual High & Low
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940
INDUSTRIALS
UTILITIES
1941
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
Utility Stock Scale
Industrial Stock Scale
INDUSTRIALS
UTILITIES
SOURCE: WALL STREET JOURNAL
Power Prod.
FEDERAL RESERVE INDEX
Monthly
ELECTRIC POWER PRODUCTION
Fed. Res. Index
ELECTRIC POWER PRODUCTION
COMPARED WITH FEDERAL RESERVE INDEX
Weekly Average
(Unit 10,000,000 KWH)
Adjusted for Seasonal Variation
* ESTIMATED
SOURCE: STANDARD STATISTICS
Net Income
Millions of Dollars
GROSS REVENUES OF UTILITIES
NET INCOME OF UTILITIES
Gross Rev.
NET INCOME OF UTILITIES
12 Months Ended Each Quarter
For Companies Making Up Over 75% of the Industry
(On basis 30% Federal normal tax)
First Quarter
Second Quarter
Third Quarter
Fourth Quarter
* ESTIMATED
SOURCE: STANDARD STATISTICS
Monthly Average
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940
UTILITY FINANCING
Millions of Dollars
REFUNDING
NEW CAPITAL
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1941
SOURCE: FINANCIAL CHRONICLE

country were pledged as collateral (many others had previously been disposed of by special offerings, or in the open market).

A complete list of the collateral under the loan appeared in the *Congressional Record* of July 29th and included the utility issues shown in the table on page 356. (We have added the approximate current market valuations.)

Utility issues appear to make up only about 5 per cent of the total, and future liquidation of these holdings by the RFC in the open market would, therefore, not present any special handicap to the utility industry.

Associated Gas & Electric

RECENT news developments concerning the Associated Gas & Electric system resulted in an advance of about one-third in the AG&E Company debentures on the Curb to about 17, and in AG&E Corporation debentures over-the-counter to around 20. These gains perhaps reflected the belief that recent events would expedite the final reorganization plan. In our opinion, however, complete integration and reorganization of this system may still require several years.

The seventh report of the trustees of the two top companies was recently issued and contained a general review of the situation. For the twelve months ended June 30th, consolidated net income of the system was $12,203,167, but only about 20 per cent of this amount was available to the Corporation because of various legal and other restrictions and none, of course, accrued to the top company.

These restrictions included dividend arrearages on certain preferred stocks of subsidiaries, deficiencies in earned surplus of certain subsidiaries, restrictions under specific orders of, or agreements with, regulatory bodies and under loan agreements, or by reason of the cash requirements of certain subsidiaries. Of the approximate $2,440,000 which would have been available to the trustees of the AG&E Corporation, $704,660 was disbursed by the trustees, who reported as of June 20th a net cash balance of $1,382,616.

The system has a large construction program planned for the future, particularly in sections like Virginia where defense activities may require substantial increases in output, and this will doubtless absorb a considerable part of future net income (in addition to the amount obtainable from depreciation reserves). This program may tend to defer any application of cash to retirement of senior obligations of subholding companies, which it had been thought previously might be permitted by the trustees in advance of final reorganization.

POSSIBLY the principal reason for the recent increased interest in AG&E securities was the settlement reached with the Hopson family, which clarifies the situation with respect to various claims on the assets of certain affiliated investment companies and subholding companies.

Some progress is also being made in disposing of smaller properties. The Northeastern Water & Electric system, comprising some 43 companies, is being sold for about $3,800,000, and negotiations are under way to dispose of certain properties in South Carolina. However, these steps form only a relatively small part of the immense program which lies before the trustees before reorganization can be completed.

The trustees have encountered some difficulties in financing Virginia Public Service, an important subsidiary in the heart of the defense area. Despite the company's need for construction funds in connection with defense activities, the SEC objected to the proposed plan, and the Company has now asked the banking group interested in the new issue to arrange a new program. When eventually carried out, this financing may pave the way for refunding operations by other companies which will help to bolster system earnings.

INTERIM EARNINGS PER SHARE

Electric and Gas Companies	End of Periods	12-month Period 1941	1940	Incr.	3-month Period 1941	1940	Incr.
American Gas & Elec. *Consol.*	June	$2.90	$2.92	D1%	$.61	$.67	D9%
Amer. Power & Lt. (Pfd.) *Consol.*	May	6.34	6.96	D9	..	..	..
American Water Works *Consol.*	June	1.09	1.45	D25	.27	.29	D7
Parent Co.	June	.42	.50	D16	.11	..	..
Boston Edison	June	2.38	2.26	5	.60	.62	D3
Cities Service P. & L. (Pfd.) *Consol.*	J'e(c)	16.98	19.10	D12	..	..	..
Commonwealth Edison *Consol.*	June	2.38	2.35	1	.59	.53	12
Com. & Southern (Pfd.) *Consol.*	June	9.55	8.96	7	2.53	2.06	23
Consolidated Edison, N. Y. *Consol.*	June	2.06	2.23	D8	.37	.42	D12
Parent Co.	June	2.09	2.12	D2	.49	.46	6
Cons. Gas of Baltimore *Consol.*	June	4.18	5.02	D17	1.05	1.13	D7
Detroit Edison *Consol.*	July	1.84	1.66	11	..	..	..
Elec. Bond & Share (Pfd.) *Parent Co.*	Mar.	7.18	6.78	16	1.86	1.54	20
Elec. Power & Lt. (1st Pfd.) *Consol.*	Apr.	7.27	8.22	D12	3.55	3.86	D8
Parent Co.	Apr.	1.76	1.38	28	.53	.45	18
Engineers Public Service *Consol.*	June	1.75	1.76	..	..	..	..
Parent Co.	June	.56	.59	D5	..	..	..
Federal Light & Traction *Consol.*	June	1.80	2.45	D27	.38	.43	D12
Inter. Hydro-Elec. (Pfd.) *Consol.*	Mar.	2.62	5.35	D51	2.23	.58	285
Long Island Lighting (Pfd.) *Consol.*	Mar.	5.86	5.34	9	1.65	1.02	61
Parent Co.	June	4.11	3.36	22	..	..	..
Middle West Corp. *Consol.*	Dec.	1.20	1.24	D3	.34(b)	.26(b)	31
Parent Co.	Dec.(a)	.53	.43	23	.09(b)	.11(b)	D18
National Power & Light *Consol.*	May	1.29	1.22	5	.22	.26	D16
Parent Co.	May	.65	.63	3	..	..	..
Niagara Hudson Power *Consol.*	June	.73	.50	46	.13	.14	D7
North American Co. *Consol.*	June	2.08	2.04	2	.53	.46	14
Parent Co.	June	1.55	1.60	D3	..	..	..
Nor. States Pwr. (Del.) *Consol.* (Cl. A)	Apr.	3.53	2.30	54	..	..	..
Pacific Gas & Electric *Consol.*	June	2.45	2.78	D11	..	..	..
Public Service Corp. of N. J. *Consol.*	June	2.36	2.85	D17	..	..	..
Parent Co.	July	2.38	2.69	D12	..	..	..
Southern California Edison	June	2.29	2.33	D2	.51	.49	4
Stand. Gas & Elec. (Pr. Pfd.) *Consol.*	Dec.	9.79	6.94	40	..	..	..
Parent Co.	Dec.	2.11	1.76	20	..	..	..
United Gas Improvement *Consol.*	June	.99	1.04	D5	.18	.25	D28
Parent Co.	June	.89	.98	D9	.16	.23	D28
United Lt. & Power (Pfd.) *Consol.*	June	9.17	8.00	14	..	..	..
Parent Co.	June	3.99	4.70	15	..	..	..
Gas Companies							
American Light & Traction *Consol.*	June	1.88	1.68	12	..	..	..
Brooklyn Union Gas	June	2.29	2.28	..	.58	.73	D21
Columbia Gas & Electric *Consol.*	June	.31	.63	D51	.08	.11	D27
Parent Co.	Dec.	.38	.34	12	..	..	..
El Paso Natural Gas *Consol.*	June	3.61	3.85	D6	.17	.21	D19
Lone Star Gas *Consol.*	June	1.23	1.26	D3	.16	.07	128
Oklahoma Natural Gas	June	3.44	3.50	D2	..	..	..
Pacific Lighting *Consol.*	June	3.51	2.63	33	..	..	..
Peoples Gas Light & Coke *Consol.*	June	5.65	5.01	13	1.93	1.33	45
United Gas Corp. (1st Pfd.) *Consol.*	Apr.	10.72	13.73	D22	5.50(b)	7.34(b)	D25
Parent Co.	Apr.	8.28	8.72	D5	2.53(b)	3.59(b)	D30
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	May	12.16	10.89	11	3.42	2.81	.22
Parent Co.	June	10.46	9.82	6	2.66	2.40	10
General Telephone *Consol.*	June	3.04	2.69	13	.82	.74	10
Western Union Tel.	June	5.30	2.98	77	2.05	1.25	64
Systems outside United States							
Amer. & For. Pwr. (1st Pfd.) *Consol.*	Mar.	6.32	5.47	16	1.90	1.75	8
Parent Co.	Mar.	3.17	2.96	7	.44	.40	10
Inter. Tel. & Tel. *Consol.* (a)	Dec.	D.03	.45	..	.03(b)	.06(b)	D50
Parent Co.	Dec.	D.29	.24	..	D.19(b)	D.11(b)	..

D—Deficit or decrease. (a) Earnings are exclusive of certain subsidiaries. (b) January-March quarter. (c) Six months ended June 30th.

What Others Think

Accounting for Expenditures on A Refunded Bond Issue

THE old controversy over accounting for discount, premium, and expense on refunded bond issues was apparently renewed by the FPC in the Pennsylvania Water & Power Company Case, 35 PUR (NS) 324. However, the recent discussion seems to prove only that accounting is not an exact science. On May 28, 1941, C. E. Packman, general auditor of the Middle West Service Company, narrowed the argument to the field of public utilities in a paper presented before the Central States Accounting Conference then being held in Chicago.

Prior to 1931, there was evidently no rule on the subject, with the doubtful exception of tax regulations under the Revenue Act of 1918. The tax regulation provided that the unamortized balance of discount and call premium applicable to bonds being retired could be deducted in the year of retirement. This rule was later expanded by judicial interpretation to include expenses as well as discount and premium. It was confirmed in the Great Western Power Company Case, 297 US 543.

In 1931 the Wisconsin commission tentatively provided for the transfer of unamortized discount or premium from the issue to be refunded to the succeeding issue with the charging of any excess interest rate to earned surplus. But unfavorable money markets obtaining at that time and the subsequent adoption of different provisions rendered this ruling practically ineffective. The ICC made no mention of the matter in prescribing accounts for telephone companies in 1913 and electric railways in 1915; neither did the NARUC nor FPC in uniform systems which those bodies respectively recommended and prescribed in 1922.

These uniform systems simply provided for the charging to profit and loss or to surplus of a proportion of unamortized discount, expense, and premium upon the reacquisition by an issuer of a long-term debt. The treatment was the same whether the issue was to be refunded or retired.

IT was in 1935 that large-scale refunding of utility bonds at lower rates began. This was the signal for accountants to become vocal on the subject. One writer (William M. Shanahan) in that year advocated the amortization of the balance of unamortized discounts and expense and the call premium on the refunded issue over a subsequent period equal to the savings resulting from the refunding. Another (H. C. Freeman) proposed to amortize all such amounts over the life of any new issue. A third (Arthur Andersen) thought the amount should be amortized over the remaining life of the old issue. A fourth (V. Childs Klug) suggested that the discount and expense should be amortized over the remaining life of the old issue while a call premium should be amortized over the life of the new issue. The immediate write-off, although accepted by other industries, was not favored by the utilities.

In May, 1936, the SEC adopted a uniform system of accounts for mutual and subsidiary service companies. The FPC adopted a uniform system for utilities and licensees under the Power Act. In 1937 the SEC adopted a system for holding companies, while the NARUC in 1936 had already recommended to its members uniform systems of accounts for electric utilities, later to be followed by systems for gas and water utilities.

All of these systems contained similar provisions to the effect that, upon refunding, balances of discount and ex-

pense and the premium upon the issue refunded should be charged to earned surplus in the absence of approval of a longer amortization by the commission.

In 1939 a committee of the NARUC, in a symposium on accounting for unamortized debt discount and other premiums on refunded debt issues, presented the following methods suggested by various committee members:

1. Charge in total to surplus at the time the refunding occurs.
2. Amortize over the shortest reasonable future period, the length of such period depending upon a consideration of all relevant facts.
3. Amortize over the remainder of the life of the bonds refunded.
4. Amortize over the remainder of the life of bonds refunded (for the unamortized debt discount and expense) and over the life of the refunding issue (for the call premiums).
5. Amortize over the life of the refunding issue.

In September of the same year the American Institute of Accountants published its Accounting Research Bulletin No. 2, which revealed considerable research on the part of the members of its committee on accounting procedure, but left the matter open through its approval of alternative treatment.

This bulletin expressed it to be the opinion of the committee that no qualification of accounting reports is required where a direct charge to surplus is made or where subsequent amortization proceeds over the life of the issue retired. The committee rejected the procedure providing for subsequent amortization over the life of the new issue, except where authorized by regulatory authorities, as well as any separation of treatment of the call premium on the refunded issue as distinguished from the balances of discount and expense applicable thereto. Approval was also given to acceleration of subsequent amortization provided the charge is made to income.

Last October the FPC, in the Pennsylvania Water & Power Company Case, denied an application to amortize a balance of unamortized discount or expense, plus the call premium and expense of retiring an issue which was being refunded. The FPC took different action despite the fact that a similar application had been approved by the Pennsylvania Public Utility Commission. Commenting on the FPC's action, Mr. Packman said in his Chicago paper:

> It is possible that this application was repugnant to the FPC because of the manner in which the applicant had dealt with the discount and expense on its books for some period of years. In 1934 the applicant transferred an amount equivalent to the unamortized debt discount and expense applicable to the then outstanding issue from "Miscellaneous Reserves" (presumably appropriated from Earned Surplus) to a Special Debt Discount and Expense Reserve and thereafter made all its amortization charges to such Special Reserve rather than to Income. Thus for a period of five or six years applicant had made no charges to Income for such amortization. In the application in question the Pennsylvania Water & Power Company sought to transfer the balance of such Special Reserve to its Surplus account and thereafter to amortize the remaining discount and expense plus the call premium and expense of retirement arising in the refunding over a sixty-one months' period subsequent to March 1, 1940. It can thus be seen that, as a practical matter, all of the discount and expense had already been charged to Surplus. While the FPC recognized this and could have confined its discussion to the call premium and expenses of retirement alone, it nevertheless proceeded to argue the question as a whole.

The commission purported to recognize, as a "sound accounting doctrine," the principle that charges and costs incurred in connection with the issuance and retirement of securities should be removed from accounting records, once such securities are themselves redeemed and the principal amounts thereof removed from accounting records. In support of this position, the commission thereupon quoted only a portion of the Research Bulletin No. 2 of the American Institute, already referred to. In its official organ, *The Journal of Accountancy* (January, 1941), the American Institute of Accountants editorially called attention to this use of a partial quotation, by the FPC, of the institute's bulletin.

Likewise, in the same publication for February, 1941, George O. May, vice

chairman of the institute's committee on accounting procedure, critically examined the commission's reasoning in this case (upon which, incidentally, a rehearing has been granted). However, Mr. Packman noted that the trend of cases decided by the commission indicates an intention to adhere to the general principle announced in the Pennsylvania Water & Power Company Case; namely, an immediate charge to surplus. He referred to the El Paso Electric Company Case in which the company was not allowed to amortize the items over the remaining life of the bonds to be refunded, but was granted amortization over a 4-year period. In the Sierra Pacific Power Company Case the company agreed to charge the amounts to surplus. In the Indiana General Service Company Case the amortization over a subsequent period was denied and a charge to surplus was directed.

Other applications for FPC permission to amortize over subsequent periods are still pending. Incidentally, in February, 1941, the Wisconsin commission required the Wisconsin Public Service Corporation to write off unamortized items of so-called grandfather issues over a period of ten years, but permitted the company to continue amortization of the amounts applicable to the issue then being refunded over the life of that issue.

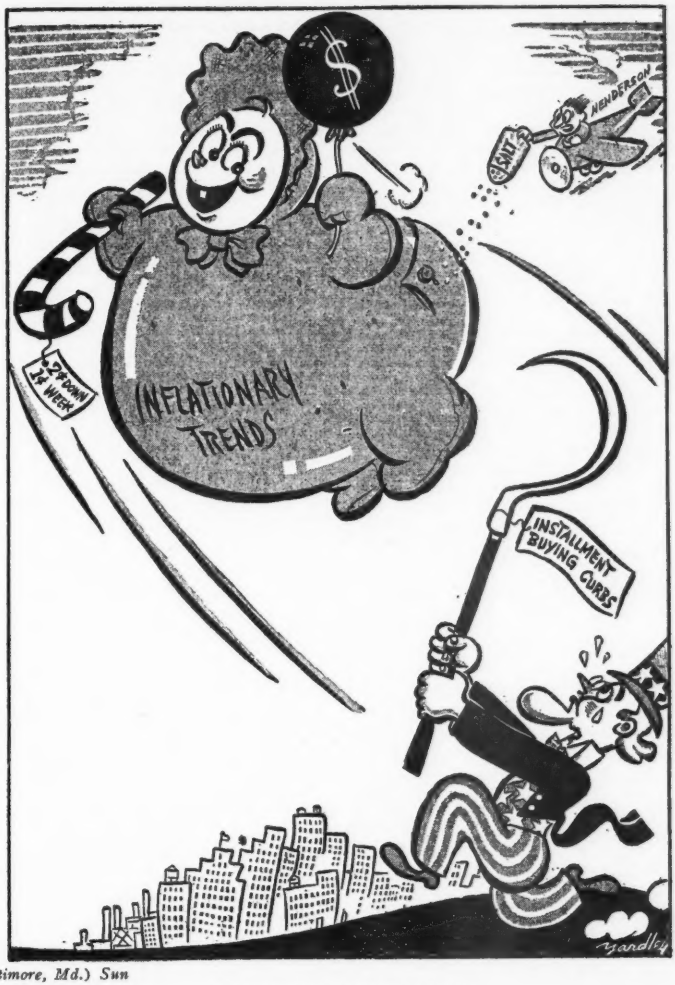
IN short, it appears to Mr. Packman that some regulatory bodies are resolved "to clear the accounts of the utilities as rapidly as possible of all except the current cost of money." While this is not conclusive in rate proceedings, it does have the weight of *prima facie* evidence. But how can this objective as to cost of money square with the indicated treatment of the rate base? The new FPC Uniform System of Accounts for Electric Companies (effective January 1, 1937) generally prescribed original cost accounting for plant. The NARUC's recommended system follows the same pattern. While the courts have not as yet avowedly repudiated Smyth *v.* Ames, they have upheld original cost accounting and there is a strong presumption that original cost for rate base valuation will eventually be upheld.

Mr. Packman finds an element of inconsistency between the position of the regulators on the cost of money, as distinguished from cost of property. Conceding that there is a technical difference between "original cost" and "prudent investment," he finds that the common denominator of both is historical cost of construction and adds:

> Therefore, in considering the problem of rate making for utilities, consistency demands that the factors, other than the rate base involved in such rate making, should bear the same relationship to both an original cost and a prudent investment rate base. To this extent, therefore, they are synonymous. Accordingly, if historical original cost is to be the rate base, then the cost of capital factor should also be on an historical basis.
>
> In his famous dissenting opinion in the Southwestern Bell Telephone Company Case (262 US 276, 289) Justice Brandeis presented at length his views on the fallacies of the present value rule of the rate base and the strength of the prudent investment rule. He was thoroughly consistent, however, when he conceded that under the prudent investment rule the actual or historical cost of money was to be considered and not the rate which happened to prevail at the time. The pendulum seems to have swung all the way back to this opinion of Justice Brandeis in so far as the reasoning of some regulatory bodies is concerned with the rate base. But there the analogy ceases.

MR. Packman finds that this whole question has been well argued in the case of the Chicago District Electric Generating Corporation, recently decided by the FPC. In the company's brief, the following argument is developed:

> *If original cost is to be used as the sole rate-making base then it is inescapable that the higher historical cost of money must be determinative of the rate of return.*
>
> The foregoing conclusion that a 7 per cent return is fair and reasonable is based on the present low cost of money to the Edison system and is supported by the experience of utilities generally. The commission's staff has denied this respondent the right to introduce evidence concerning the present value of its property and has indicated that the rate base should be founded solely on the evidence concerning original cost.
>
> When it comes to rate of return, however,



The (Baltimore, Md.) Sun

BRINGING DOWN BABY

the commission's staff fails to recognize the fact that the cost of money also rises and falls and that in order to do substantial justice to utilities and consumers alike, it must use the historical cost of money as the basis for the rate of return which it allows on the original cost of the property. Instead, the staff uses the present cost of money, but denies to respondent the right to claim the present value of its property.

Respondent contends that the present cost of money can only be used provided the present value of the property is accepted as a rate-making base. Alternatively, on the principle, the validity of which we strenuously deny, that historical cost of the property is the sole rate-making base, the historical cost of money must be the predominant element in determining the rate of return.

Neither in the commission's reply brief nor its decision, which virtually went "all out" for original cost valua-

tion, was this argument discussed. Summing up his conclusions, Mr. Packman stated:

> The conclusion seeems to be inevitable that the money cost to be considered in rate making based upon the original cost of, or prudent investment in, a company's property should be the historical cost of the money invested in such property. It follows likewise that in order to have the accounts of a company reflect such cost the unamortized discount and expense and the call premium applicable to refunded issues must be deferred. To say that present value is still the law of the land as to the rate base may not be sufficient.
>
> If we are being conducted through a period of transition from a present value to an original cost concept of a rate base, the only safe procedure may be to have the accounts continue to reflect the historical cost of capital. In view of the indicated unwillingness to deal consistently with the cost of capital by some of those who apparently seek to establish original cost as the rate base, it would seem that the utilities ought to preserve any advantage inherent in having their accounts reflect such consistency with respect to both elements.

ASSUMING, however, that there is justification for deferring discount, premium, and expenses on refunded issues, what is the period over which such deferment should be recognized? Because of the fact that rates are not adjusted continuously, Mr. Packman thinks that there is considerable argument in favor of amortization over the life of the refunding issue, rather than accelerating the amortization over a period determined either by the savings involved or the unexpired life of the refunded issue, or by some arbitrary term. In any event, he suggests that companies "resist the rule of immediate write-offs, lest they be deprived of their just due in the matter of future return."

—F. X. W.

Yardstick Phone Rates Suggested to State Commissioners

ON the afternoon of August 28th, at the annual convention of the National Association of Railroad and Utilities Commissioners in St. Paul, an interesting and somewhat unusual report came from the Committee on Progress in Regulation of Public Utilities. It dealt chiefly with comparative rates as a test of reasonableness in fixing rates for nearly all major forms of utility service. But the proposal to set up a yardstick for telephone rates was easily the outstanding feature of the report.

The committee was headed by Leon Jourolmon, Jr., acting chairman of the Tennessee Railroad and Public Utilities Commission. Other commission members of the committee were Ralph J. Benjamin of Washington, Thomas C. Buchanan of Pennsylvania, James Lawrence Fly, chairman of the Federal Communications Commission, P. A. Frye of Louisiana, Richmond B. Keech of the District of Columbia, Barr Keshlear of Iowa, E. F. McNaughton of California, Leland Olds, chairman of the Federal Power Commission, R. W. Peterson of Wisconsin, and Claude H. Swain of New Hampshire.

It was not generally known, immediately preceding submission of the report, whether all of the committee members were in complete agreement with the entire document. Possibly some reservations by some members of the committee may have later appeared.

The report began with an analysis of the legal recognition which has been given to the approach towards fixing of reasonable rates by rate comparisons. It was conceded that courts and commissions have generally frowned on comparative rates as persuasive evidence of the reasonableness of rates. But it was noted that such evidence has often been received in regulatory proceedings for what it was worth, especially where it was properly qualified by additional comparisons concerning the similarity of size of respective properties, operating

conditions, cost factors, etc., concerning the different utilities whose rates were to be compared.

ASIDE from the strict admissibility of such evidence in legalistic rate procedure, however, it is probably true that comparative rate technique has had an extra-legal influence on utility rate structures. This "regulation by publicity" is best exemplified by the periodical statistical rate comparisons released by the Federal Power Commission respecting the cost of electric service in various classes of cities.

In other words, regardless of the equities involved or the extenuating circumstances which might justifiably explain a difference in the tale of two cities, the mind of the citizen of city "A" is preconditioned, so to speak, against accepting a certain utility rate when he has been informed that it is substantially higher than the rate for similar service in city "B." This is especially true where cities "A" and "B" are fairly close together and are of approximately similar size.

The NARUC committee report claims that comparison of rates, even as a working basis for determining particular local charges, has not, by any means, been confined to regulatory bodies seeking to cut utility rates down. It has, according to the report, been utilized considerably by the Bell telephone organization to standardize and stabilize local rate charges (with some exceptions) over wide areas—which charges might be more susceptible to critical regulatory examination if they had been determined on an unrelated or competitive basis. The report states:

> It would also seem that comparison of telephone rates have been more frequently used than comparisons of rates for other kinds of utility service. This is partly true, probably, because there are so many telephone utilities which have the same unit of service and essentially the same conditions as to cost of service, plant investment per customer, and density of service demand.

The committee proposes to use comparison of rates avowedly as a device for lowering local exchange rates. The report states:

> The Committee on Progress in Public Utility Regulation suggests that the state commissions set up comparative schedules of rates which exist in the country at present and lower rates which have existed in the past, especially in the period around 1912, and adopt these former low rates as a yardstick toward which all rate reductions should tend. The obligation of the telephone companies to use their perfected research establishments for the purpose of inventing and instituting more economical means of communication should be emphasized by state commissions.

THAT portion of the committee report which deals specifically with telephone rates is part of a comparative rate study prepared for the committee by W. Trigg Miller of the staff of the Tennessee Railroad and Public Utilities Commission. However, the basis for Mr. Miller's statistical comparisons of telephone rates throughout the nation was apparently the work of the statistical and tariff section of the accounting division of the Federal Communications Commission.

Mr. Miller thinks that "the most conspicuous failure of regulatory methods in the United States is in the field of regulation of telephone rates." He points out that the cost of electricity is only a fraction of what it was twenty-five years ago. He adds that all other commodities "which are dependent upon scientific research and technological improvement have come down in price." (Radios and automobiles are mentioned.) He charges that the telephone industry has reversed this general business objective of greater production volume at decreasing unit cost and has striven to increase the cost of production.

To substantiate this charge, Mr. Miller calls on the FCC's statistical files which have comparisons of monthly telephone rates for one-party residential and one-party business service in selected cities and towns of various population classes for selected years back to 1912. The comparisons are weighted and in the smaller population groups the study is broken down to show the trend in eight

SUMMARY OF PERCENTAGE WEIGHTED AVERAGE RATE INCREASES FOR TELEPHONE SERVICE, 1933 OVER 1912, OR OVER THE EARLIEST YEAR FOR WHICH RATE IS AVAILABLE

	Percentage of Increase					
	Towns of 1,000		Cities of 10,000		Cities of 100,000	
	Res.	Bus.	Res.	Bus.	Res.	Bus.
New England	5.86	22.26	21.74	40.79	13.00	39.45
Eastern	24.60	42.86	30.77	68.78	32.43	46.23
Southern	15.24	5.24	36.32	40.36	54.84	71.24
North Central	28.29	78.73	84.11	110.88	48.85	81.78
Northwestern	23.13	19.39	54.90	68.93	69.50	89.00
Mountain	3.49	8.36	15.88	44.42	..	..
Pacific	6.94	16.80	20.91	28.91	7.00	18.33
Southwestern	48.70	26.05	76.80	78.13	33.62	57.67
	Population		Residential		Business	
Country at Large	250,000		27.33		34.24	
	500,000		23.30		.15	
	1,000,000		1.49		14.01	

geographical subdivisions of the country. This tabulation is shown above.

Of course, it might be noted in passing that the selected year "1933" is probably not a fair measure of the general level of local telephone rates obtaining throughout the country today. Certainly there have been a considerable number of telephone rate reductions since that time, as evidenced by the fact that out of a dozen or more important telephone rate cases pending in 1933, virtually all have been settled, decided, or compromised by way of rate reductions since that time. Again, these rate comparisons hardly reflect the vast improvement in the standards of telephone service and the quality of equipment used today (or, for that matter, in 1933) as compared with 1912.

Indeed, the committee report passes pretty gingerly over the generally accepted economic position of the telephone industry that increased volume and quality and density of service must be reflected in increasing operating costs. Some recognition of this economic rule for telephone plant expansion appears, however, in Mr. Miller's proposed "yardstick" formula for telephone rates, in which the tentative price of telephone service ascends steadily for both business and residential service as the population of cities increases.

This yardstick tabulation of tentative local telephone rates is probably the most unique feature of the committee report. Mr. Miller warns that "effective results in lowering telephone exchange rates by comparative statistics should not be too confidently expected." This difficulty, it is implied, stems from the alleged fact that telephone rates have already been fairly well standardized; but not necessarily at minimum reasonable levels. To circumvent this situation, the committee report contains the following suggestion:

> As a tentative goal for telephone rates throughout the country, we recommend that the state commissions test all local exchange rates against the following schedule:

Population of Cities	*One-party Residential*	*One-party Business*
1,000	1.15	2.25
10,000	1.50	2.50
100,000	2.25	4.00
250,000	3.10	6.00
500,000	3.75	6.25
1,000,000	5.25	6.00

In conclusion, the report warns that if the telephone companies continue to resist the lowering of rates to "reasonable" levels, it may "eventually become necessary to have a government yardstick for telephone service, just as the policies of the private power industry inevitably evoked, in recent years, a government yardstick for electric rates."

© 1941, *The Chicago Tribune*

"AHOY! FOR NATIONAL DEFENSE!"

Press Reaction to the Inclusion of St. Lawrence Scheme in the Rivers and Harbors Bill

By the rules of politics, President Roosevelt's recent maneuver in stuffing the St. Lawrence seaway power proposal into the Rivers and Harbors bill should be regarded as shrewd strategy. However, if the editorial reaction of the daily press, including publications which have been sympathetic towards the St. Lawrence proposal, is significant, this strategy may have over-

reached itself. Consider, for example, the following editorial from the *Detroit News,* which has long been a stout supporter of the St. Lawrence seaway proposal:

> The House committee's inclusion of the Florida ship canal in the Rivers and Harbors bill looks like an attempt to whipsaw the St. Lawrence seaway, which, at the President's request, has been included in the same measure.
>
> On the other hand, the motive may have been a foolish idea of mustering an extra vote or two for it. The Florida project, bad as it is, has supporters, among them interests opposing the seaway.
>
> But, whichever the motive for putting it in the bill, the strategem has no appeal to us.
>
> The Florida canal, in our opinion—and in the opinion generally of the country—is a definitely discredited project. Of the shipping companies expected to use it, 80 per cent have replied to questionnaires that actually they would not do so. The saving in distance from East coast to Gulf ports, it appears, would be offset by the time required to traverse the canal. . . .
>
> It is a crying shame that such a project should be bracketed with the seaway, whose economic justifiability has been established beyond question, by repeated official surveys over the last thirty years. The Florida canal would cost $200,000,000, according to government estimates. Most of that large sum, virtually equaling the cost of the seaway itself, apparently would be wanton wastes.
>
> Its inclusion in the bill can be defended only on a theory that the seaway is worth to the country twice what it should need to cost. That well may be the case. The evidence is clear that opening the Great Lakes to the oceans will prove an epochal advance in national efficiency.
>
> Still we cannot stomach the Florida canal. We hope it will be removed from the bill and the seaway allowed to stand on its own proved merits.

THE foregoing view roughly parallels the stand taken by the Scripps-Howard chain. *The Washington* (D. C.) *Daily News,* for example, loudly praised the President for his recent vetoing of the highway bill on grounds that it would have allocated highway funds to the several states on the basis of population, regardless of actual defense needs. However, the *News* continued:

> But while the President was vetoing the road bill with his right hand, what was his left hand up to? Well, to be blunt, his left hand was busy logrolling.
>
> He wrote a letter to Chairman Mansfield of the House Rivers and Harbors Committee, requesting inclusion of his St. Lawrence waterway project in an omnibus Rivers and Harbors bill, that perennial example of logrolling at its worst.
>
> In other words, Mr. Roosevelt is afraid the St. Lawrence plan will be licked unless it is bracketed with pet spending projects from other sections of the country—like the $66,000,000 Tombigbee project in Tennessee and Alabama. He is afraid it won't stand on its own feet. So he becomes a logroiler.
>
> And what happens? The committee forthwith votes to include the St. Lawrence project in the bill. But that isn't all. The committee, apparently convinced that the lid is off and now is the time to come to the aid of anybody who wants to spend a large chunk of money, votes also to include the Florida ship canal.
>
> That Florida ditch is a little matter that the President started back in the make-work days, without any by-your-leave from Congress. Eventually Congress in a fit of economy called a halt, and the weeds are crawling now over that abandoned hole in the ground. Efforts to revive the project have been repeatedly slapped down.
>
> But now we have the St. Lawrence, and the Florida ship canal, and Tombigbee, and a $28,000,000 Savannah river project, and a $23,000,000 Columbia river project, and the Lord only knows what all, wrapped up in a single bill. Something for everybody. Or, if anybody is left out, you will hear a loud hollering and another multi-million-dollar item will be slipped into the bill. We wouldn't be surprised to wake up some morning and find that our old friend Passamaquoddy had been tacked on.
>
> Congressional logrolling is the taxpayers' worst enemy. And this time the President can't put all the blame on Congress.

Of course, in all fairness, it should be observed that a pretty big majority of the daily press had registered its opposition to the St. Lawrence proposal long before its incorporation into the Rivers and Harbors bill. It may well be that, as a practical matter, votes have actually been gained in Congress by this procedural maneuver. If, on the other hand, Congressmen vote along lines similar to the trend of newspaper expression, the remaining opposition to the St. Lawrence proposal may prove surprisingly strong.

The March of Events

NARUC Convention

On the morning of August 26th in the St. Paul hotel at St. Paul, Minnesota, the fifty-third annual convention of the National Association of Railroad and Utilities Commissioners was called to order by its president, James W. Wolfe of South Carolina.

After welcoming addresses by Governor Stassen of Minnesota, and Mayor McDonough of St. Paul, Ray C. Wakefield, first vice president of the association and member of the Federal Communications Commission, responded on behalf of the association.

The opening session was featured by the report of the retiring president, James W. Wolfe, who reviewed the critical events which have occurred since he assumed office last year at the Miami convention. He outlined the need for alert regulatory action by the state commissions to cope with utility developments which have arisen in connection with the present emergency, such as the diversion of freight traffic from water carriers to land carriers, and the shortage of materials for the maintenance and expansion of utility facilities in the face of unprecedented demand for increased service.

The afternoon session of August 26th was devoted to a discussion of the effect of the national emergency on utility rate regulation. The discussion was led by Ormond R. Bean, Oregon utility commissioner; Basil Manly, member of the Federal Power Commission; and Ray L. Riley, member of the California commission. The discussion covered two main questions: (1) Whether provision should be made for the amortization of investment by utilities in plant expansion resulting from the national emergency; (2) to what extent utility revenues resulting from increased defense business should be used for rate reductions.

Commissioner Manly advocated the amortization of investment of facilities which could not be used for other than defense purposes; and, also, the use of temporarily high earnings to strengthen the utilities' depreciation reserves as a cushion against post-bellum economic recession.

Commissioner Bean expressed similar views, stating that utilities should be permitted to employ any temporarily excess earnings above a fair return to retire excess plant so as to avoid future burdens on local ratepayers. He also expressed concern over the future of private enterprise in the electric power industry and suggested the appointment of a committee to investigate utility emergency conditions in all states.

The report of the Committee on Service and Facilities and Safety of Operation of Public Utilities, under the chairmanship of Commissioner Ralph W. Thorne of Pennsylvania, was presented. It dealt mostly with state coöperation with the Civil Aeronautics Board.

At the morning session of August 27th, a progress report of the Committee on Depreciation, under the chairmanship of Nelson Lee Smith, chairman of the New Hampshire commission, was presented. The report of the Committee Coöperating with the Federal Communications Commission in Special Studies of Telephone Regulatory Problems was presented by its chairman, Robert A. Nixon of the Wisconsin commission. It was discussed by Chairman James Lawrence Fly of the FCC.

The report of the Committee on Legislation by Commissioner H. Lester Hooker of Virginia briefly reviewed the bills in Congress affecting utility regulation.

The report of the Committee on Coöperation between State and Federal Commissions, under the chairmanship of Commissioner John J. Murphy of South Dakota, reviewed coöperative procedure during the past year between state commissions and the ICC, the FCC, the FPC, and the SEC.

The afternoon session of August 27th was ushered in by a report of the Committee on Progress in the Regulation of Transportation Agencies, under the chairmanship of Commissioner George C. McConnaughey of Ohio. The session was featured by a discussion on transportation problems in the national emergency, in which Ralph Budd of OEM and P. A. Frye of Louisiana participated.

At the morning session of the third day Ray C. Wakefield of the FCC presented a report of the Committee on Resolutions. Fred Kleinman of the Illinois Commerce Commission presented the report of the Committee on Accounts and Statistics, and Dr. J. R. Foster of New Jersey presented the report of the Committee on Corporate Finance.

In the discussion on the subject of "Trends in Public Utility Finance," Chairman John Siggins, Jr., of Pennsylvania, Robert E. Healy, member of the SEC, John Houser, staff member of the SEC, and A. R. Colbert, staff member of the Wisconsin commission, participated.

At the afternoon session of August 28th, the report of the Committee on Progress in the Regulation of Public Utilities, under the chair-

manship of Leon Jourolmon, Jr., of Tennessee, was presented. (See ante, page 364.) Integration of utilities under the Holding Company Act was discussed by Robert H. O'Brien, director of the public utilities division of the SEC.

During this session Ray C. Wakefield, former vice president, was elected president and he forthwith resigned because of his recent transfer from the California commission to membership on the FCC. Thereupon Commissioner James D. James of Missouri, second vice president, was elected to the presidency. Frank W. Matson of Minnesota was elected first vice president, and Wade O. Martin, of Louisiana, second vice president. Dallas, Texas, was selected as the city to entertain the 1942 convention of the commissioners. General Solicitor John E. Benton and Secretary Benjamin Smart were reëlected.

On the final day of the convention, August 29th, the report of the Committee on Developments in Regulatory Law was made by Lon P. MacFarland, staff member of the Tennessee commission. The report reviewed important decisions affecting regulation during the past year, including the Hampton Water Case (New Hampshire Supreme Court), the New River Case (U. S. Supreme Court), and several recent decisions dealing with appeal and review in regulatory proceedings.

The final day was featured by a discussion of power problems under the defense program, led by Chairman Leland Olds of the FPC, Commissioner Frederick G. Hamley, of Washington, and Walter R. McDonald, chairman of the Georgia Public Service Commission.

Daylight Saving Fails In Carolinas

NATIONAL defense has been given a jolt instead of a boost since the inauguration of daylight saving time in the Southeast, if the idea of the plan was to conserve electrical power. More kilowatt hours of power were consumed in each of the first two weeks of daylight saving time in 289 communities of North and South Carolina than in the last week in which the states were still on Eastern Standard Time, figures recently released by the Carolina Power & Light Company disclosed.

The report was for electric power sold to 600,000 persons in the two states. The figures for the number of kilowatt hours of power used during the one week of standard time, and the two weeks of daylight time showed that the use of power had increased approximately 400,000 kilowatt hours each week.

The last week of standard time, July 21st-27th, a total of 22,060,355 kilowatt hours were consumed in the area. Then during the week of July 28th-August 3rd, the first week under daylight saving time, 22,422,761 kilowatt hours were used. The next week the total load consumed jumped to 22,807,050 kilowatt hours.

Carolina Power & Light officials stated in their report that the company had not been called upon at any time during the three weeks' period to furnish any extra power for use in defense work.

The figures did not include sales to other power companies, but only to patrons of CP&L.

Columbia Power Authority

A MEASURE creating a Columbia Power Authority, with a 3-man administration board similar to management of the Tennessee Valley Authority, was introduced last month, sponsored by Senator Homer T. Bone, Democrat of Washington, and Representative Martin F. Smith, Democrat of Washington.

The bill is practically identical with the bill endorsed by Secretary of the Interior Ickes, with the exception that the Ickes bill would create a single administrator to be appointed by the Secretary. Both measures would provide for the immediate acquisition of existing private power systems for the distribution of power through communities and coöperatives.

Bone said that while he did not challenge the "objectives and good faith" of Secretary Ickes in administering the power program, he was convinced that "the only safe course is to create a wholly independent agency in our Northwest."

TVA-Alcoa Agreement

THE Tennessee Valley Authority and the Aluminum Company of America signed a contract on August 15th under which TVA will operate Alcoa's 5-dam hydroelectric system on the Little Tennessee river. Also, TVA proposes to build a $50,000,000 hydroelectric dam at the Fontana site in North Carolina.

David E. Lilienthal, TVA's vice chairman, said the government agency and Alcoa had "agreed that this river should produce the most possible good" and contribute fully to the national defense effort. The contract, Lilienthal said, would make it possible for Alcoa to produce 22,000,000 pounds of aluminum annually in addition to its present output.

Alcoa turned over the Fontana dam site as a part of the contract and Lilienthal declared a request for funds for the beginning of construction would be made at once.

Concerning the provision for integrating the private and public hydro systems, Alcoa declared that its relations "with the authority in the past have given the company confidence that the integration of the two systems under the authority's direction will be conducted with fairness and efficiency."

Gives Up Project

ATTORNEY Wilbur Morse of KAMO Electric Coöperative, Inc., announced last month plans for a 4-state network of power

lines charged with Grand River dam current had been abandoned. Morse said KAMO had withdrawn its offer to purchase all available power from the Grand river because there were too many restrictions.

Ray McNaughton, Miami, former chairman of the Grand River Dam Authority board of directors, had fought the KAMO proposal on grounds that GRDA and the coöperative had the same prospective customers. McNaughton said both organizations hoped, for example, to serve proposed Army cantonments near Neosho, Missouri, and Muskogee, Oklahoma. McNaughton argued that the GRDA should deliver the power direct to consumers rather than increase the cost of the current by permitting the KAMO to act as a "middleman."

Fifteen rural electrification projects in Oklahoma, Kansas, Missouri, and Arkansas were merged to form the KAMO.

Arizona

Creation of Power Authority Urged

CREATION of an Arizona Power Authority to provide cheap hydroelectric energy to Arizonans and industry was suggested last month by Governor Sidney P. Osborn in a summary of a proposed law sent to members of the legislature for study. The proposal, a redraft of one that failed of enactment in the regular session of the legislature, would follow the provisions of the Federal government's Tennessee Valley Authority.

Governor Osborn did not reveal whether he planned to call a special session of the legislature to adopt the bill. In a statement, the executive said the proposition would be beneficial to new Arizona industries. He charged that statements of the Salt River Valley Water Users' officials that there is a surplus of power are misleading, because such assertions are based on the potential output of the project at a time when all dams are full.

The bill's summary disclosed that the proposed set-up would:

Create a power authority administrative agency, consisting of five members who would receive $15 per day for actual time spent, the amount paid them not to exceed $3,000 annually.

Abolish the Colorado River Commission, and transfer its duties and records and unexpended funds to the authority.

Prohibit the authority from ratifying the Santa Fe compact. (Only the legislature—by law—can ratify any compact involving this and other states.)

Give the power authority commission broad powers to build or enter into contracts for the building of any water or power project and to issue bonds on its anticipated revenue.

California

Power Bond Vote

A $66,500,000 bond issue, providing for the purchase of the Pacific Gas and Electric distribution system, will be on the November 4th ballot for a decision by San Francisco voters. The supervisors made that definite on August 18th by a 9-2 vote. Supervisors Brown and Colman were the dissenters.

They declared the proper procedure for solving San Francisco's power problem is to amend the Raker Act. Colman also challenged the estimated net profit of $5,233,000 annually from municipal operation of the system as compared with $2,400,000 gross revenue under the outlawed agency contract. Colman insisted events might prove Utilities Manager Cahill's estimate of surplus profit to be "optimistic."

City Attorney O'Toole was to draw a charter amendment to allow for the issuance of the bonds under what has become commonly known as "Plan Nine." It has the approval of Secretary of the Interior Ickes.

In addition to the purchase of existing PG&E facilities, the bond issue would cover construction of an additional hydroelctric plant at Red Mountain Bar, extension of the present power line from Newark into San Francisco, and purchase or construction of a steam stand-by plant.

Delaware

City Plant Shows Profit

AN operating profit of $114,765 was shown in the operations of the city-owned electric light plant at Dover in the fiscal year ended on June 30th, according to the annual report of the auditor of the city's financial accounts made public last month.

The auditor's report showed receipts from the operation of the electric plant amounted to $198,233, while operating expenses were placed at $83,468.

District of Columbia

Power Expansion Announced

AN accelerated expansion of plant facilities to meet the increasing demand for electric power in the nation's capital was announced on August 22nd by A. G. Neal, president of the Potomac Electric Power Company. The company, serving Washington, D. C., and surrounding territory, will spend more than $30,000,000 by 1943 for the installation of new generating facilities and the expansion and improvement of transmission and electric power distribution systems.

After installing a 50,000-kilowatt generating turbine last October, the company ordered three additional units of the same size, one to be installed next March, another to be put into operation early in 1943, and the third late in 1943. The construction program, Mr. Neal reported, will run at the rate of more than $10,000,000 annually and the combined cost of the three new generating units alone, with accompanying machinery, will approximate $11,395,000.

Illinois

Demand Fare Increase

AN immediate 1-cent increase in street car fares to 8 cents was asked by the Chicago Surface Lines in a petition presented to the state commerce commission in Springfield last month.

The petition, signed by the lines' four receivers and Charles W. Chase, president, asserted that recent increases in wages and material costs have added $2,900,000 a year to annual operating expenses. These higher expenses require an immediate "emergency" boost in street car fares, pending a full hearing by the commission on a permanent fare increase, the petition argued.

The company maintained that even an 8-cent fare would "yield an entirely inadequate return" but argued that the additional 1 cent a ride was needed to maintain adequate service.

The city council voted unanimously on August 22nd to oppose the increase being sought by the Chicago Surface Lines and the elevated lines. The council's resolution directed the corporation counsel to oppose any hearings on the rate boost applications, unless the transit companies officially accept the transit unification plan adopted by the city council June 19th.

The unification ordinance requires the merger of the surface and elevated lines into one system and the undertaking of a $102,000,000 improvement program.

Rehearing Sought

THE Federal Power Commission on August 22nd announced the receipt of an application for rehearing and reargument by Chicago District Electric Generating Corporation of Chicago on the commission's opinion and order of July 16th, which applied the prudent investment theory as a basis of rate making and ordered the corporation to cut its rates to Commonwealth Edison Company of Chicago by $521,978 annually through establishing the corporation's rate base at $34,355,469 and fixing the rate of return at 5¼ per cent thereon.

Kentucky

Tax Losses Block TVA

ANY bill to enable Kentucky municipalities to contract with the Tennessee Valley Authority for power must compensate governmental units for taxation of privately owned utilities which would be lost under the plan, State Public Service Commissioner J. J. Greenleaf asserted recently.

Unless such provisions are included, the commissioner said, the bill would have small chance of favorable consideration by the 1942 legislature. His statement was made at a meeting at Frankfort of a group representing the Kentucky Municipal League, the state public service commission, and the TVA, at which actual work on preparation of a legislative measure was begun.

A proposed bill providing for acquisition and operation of electric plants by cities and the distribution of power supplied by the TVA, prepared by Joseph Swidler, TVA Solicitor, was submitted to the meeting and read by Carl B. Wachs, secretary of the league.

Based largely on existing laws of Tennessee, Alabama, and Mississippi, the Swidler bill contained provisions for payment of taxes by the projected municipally owned utilities only to cities. At the meeting, this clause was changed to provide for payment of sums to all governmental agencies equal to amounts which would be paid if privately owned.

Louisiana

Power Heads Promise Aid

GOVERNOR Sam Jones last month said he had obtained a promise from principal electric power producers in the state to provide energy at attractive rates for virtually any industrial expansion the defense program may bring to Louisiana.

The governor made the announcement after a conference with executives of eight utility firms, declaring that the guaranty, along with detailed information as to present and potential power production, would be used to forward the state's campaign for a larger share in defense industry.

"We will furnish the necessary electric power for any industry—except aluminum—which may locate in Louisiana, at rates which will be acceptable," the utilities said. Moreover, if their present plant capacity is not sufficient, they said they would expand it.

Aluminum was excepted because its production requires a tremendous amount of electricity and it was feared that such an expansion would cause great economic dislocation if the aluminum plants should close after the crisis, the governor said. He added that the question of obtaining aluminum plants in Louisiana was "by no means dead."

Governor Jones said the power executives revealed that on their own initiative they had undertaken plant expansion programs to increase production by 130,000 kilowatts. He said the companies had agreed to provide detailed figures as to their present output, the maximum they could produce without considerable plant expansion, and the amount which could be expected if they embarked on a full-fledged expansion program.

Gas-producing companies agreed at an earlier conference to make corresponding data available, he added.

Michigan

AFL-CIO Transit Battle

DETROIT'S metropolitan transportation facilities were paralyzed on August 20th by a strike of AFL bus drivers and street car operators which forced 1,200,000 defense and white-collar workers to walk or hitch-hike to their jobs. Service was halted at 4 A.M. when 4,000 coach operators, motormen, and conductors affiliated with the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees walked out on the city-owned Detroit Street Railway Commission.

Thorald Wuori, president of the AFL union, which was involved in a jurisdictional dispute with the State, County, and Municipal Workers (CIO), said his group planned to "tie up every form of transportation" until the city granted "sole collective bargaining rights."

The CIO union's Michigan regional director, Laurence Blythe, countered with an offer to resume operation of the city's 1,650 busses and 600 street cars "as soon as we are guaranteed police protection."

Transportation facilities were resumed at 4 P.M. on August 24th after AFL unionists accepted a settlement proposal for ending the 5-day strike. The walkout was the longest one in the city's 19-year ownership of the system.

With only three dissenting votes, the 2,500 members of the Amalgamated Association of Street and Electric Railway and Motor Coach Employees (AFL) voted to accept the peace pact drafted by their leaders and Mayor Edward Jeffries after prolonged negotiations. It called for a system-wide election August 26th to determine the union having a majority of the employees. In return for this concession, Jeffries withdrew his objection to signing a contract granting sole negotiating rights for the system's 5,500 employees. CIO spokesmen opposed the August 26th election, which was won by the AFL union.

The vote was 3,074 for the AFL Amalgamated Association of Street, Electric Railway and Motor Coach Employees and 1,925 for the CIO State, County, and Municipal Workers of America.

Plant Vote Ordered

A SPECIAL city election recently was called by the Albion city council for September 9th on the question of the city acquiring the Albion Gas Light Company plant, which is for sale because of a Securities and Exchange Commission order directing divorcement of the company from Middle West Corporation.

City officials estimated the plant and outstanding bonds could be purchased for $135,000. A $100,000 general obligation bond issue would be voted on at the election.

Nebraska

Plant Leased to District

THE McCook power plant and distribution system has been leased by the Consumers Public Power District to the Platte Valley Public Power and Irrigation District for operation, it was announced at McCook last month.

H. G. Kruse, formerly general auditor and assistant manager for the old Nebraska Light & Power Company, was named manager of the McCook division, which includes properties in McCook and at Indianola. Kruse has been in charge since the sale to Consumers last April.

Since the completion of removal of the substation on the transmission line to the new location near the McCook plant, and addition of current control equipment on the North Platte-McCook line, all current being used in McCook is coming from the Platte Valley's North Platte plant. The McCook plant is being maintained with a full crew as an emergency stand-by.

Speed Power Hook-up

THE Tri-County project took steps recently to speed immediate construction of extra transmission lines authorized under a special PWA allotment. The project's right-of-way committee started making appraisements of land on August 11th, after a meeting at Kearney with Public Works Administration officials to clear up details of the construction.

The proposed lines, to be built under a $994,000 PWA allocation, will include a 115-kilovolt transmission line from the project's Johnson canyon No. 2 power house to the Grand Island substation of the Nebraska power grid, and a 34.5-kilovolt line from the Johnson canyon No. 2 power house to Elm Creek and Gothenburg.

Under a similar allocation of $1,819,000 to complete integration of the state's public power network, the Loup River Public Power District will build 115-kilovolt lines from Tamora to the Grand Island substation and from Columbus to Omaha.

New Hampshire

Hydroelectric Development Urged

CHAIRMAN Leland Olds of the Federal Power Commission on August 20th urged the New Hampshire Water Resources Board to approve a plan for the hydroelectric and flood-control development of the Contoocook river in New Hampshire which would provide electric power for the national defense program as soon as possible.

During meetings of the board at Peterborough, Henniker, and Concord, New Hampshire, to consider alternate plans submitted by the Federal Power Commission and the Corps of Engineers, United States Army, for the development of the Contoocook river, Chairman Olds stressed the defense emergency need for electric power in the New England area.

Under the plan recommended by the commission, generating facilities totaling 61,000 kilowatts would be installed on the Contoocook.

These facilities would be 14,000 kilowatts at Blackwater; 16,000 kilowatts at Lower Hillsboro; 10,000 kilowatts at Stoddard; and 21,000 kilowatts at Penacook. A storage reservoir is planned at Bennington.

In a report to President Roosevelt dated July 16, 1941, the commission recommended an initial installation calling for completion of 7,000 kilowatts capacity at Blackwater and the storage reservoir at Bennington by 1943 and 12,000 kilowatts capacity at Lower Hillsboro by 1945.

New York

Utilities Ordered to Open Books

SUPREME Court Justice Francis D. McGarey on August 15th held at Mineola, Long Island, that preferred stockholders of the Queensborough Gas & Electric Company and of the Nassau and Suffolk Lighting Company were entitled to an accounting of the profits of those firms and of the Long Island Lighting Company, by which the two companies are controlled.

The plaintiffs, in their action, contended that profits of their companies were siphoned off by the Long Island Lighting Company and that, as a result, they failed to receive $2,000,000 in dividends to which they were entitled.

Justice McGarey's decision did not sustain the plaintiffs' claim that they were entitled to reimbursement, but merely affirmed their right to have an accounting of transactions. Whether funds will be pumped back into the companies is subject to further litigation.

Oregon

Purchase Agreement Announced

SIGNING of a preliminary agreement for purchase of all Tillamook county properties of the Mountain States Power Company by the Tillamook County People's Utility District at a price of $625,000 was announced on August 21st by Bonneville Power Administrator Paul J. Raver.

Completion of the transfer will make Tillamook the first of Oregon's ten people's utility districts to acquire its own system for the distribution of Columbia river power from Bonneville and Grand Coulee dams. Purchase of the properties will be financed exclusively from the sale of revenue bonds. A proposed issue of $750,000 worth of district bonds was approved by the voters of the Tillamook district last November.

Properties to be purchased include a 3,500-kilowatt steam-generating plant and 161.5 miles of lines within the Tillamook district and the towns of Wheeler and Nehalem. The district will serve 3,100 residential and farm consumers and 635 commercial and industrial customers.

Delivery of Columbia river power to the district will be speeded by construction of a Federal transmission line into Tillamook, Administrator Raver announced. The district has entered into a 20-year contract with the Bonneville Power Administration for purchase of 2,000 kilowatts of prime power at $17.50 per kilowatt hour. The district plans to continue operation of the local steam plant, utilizing as fuel lumber mill waste produced in the area.

PGE Request Dismissed

APPLICATION of the Portland General Electric Company for authority to purchase for $20,000 the Butte Light & Power Company of Scotts Mills was dismissed by the Federal Power Commission on August 13th for want of jurisdiction.

Pennsylvania

Bus Fees Upheld

THE Philadelphia Transportation Company must continue paying the city a $50 annual license fee for each of its busses, Judge Louis E. Levinthal ruled in Common Pleas Court No. 6 on August 15th. He ordered judgment of $17,150 for the city to cover fees due in advance for the year beginning July 1, 1940.

Behind the decision was said to be the question whether busses are "cars." In 1907 the city made its historic agreement with the Philadelphia Rapid Transit Company, PTC's predecessor, in which the transit company and its subsidiaries were exempted from "all license fees with respect to the cars run over the system."

In exchange for that exemption, and for its release from any obligation to pay for street paving and snow removal, the company agreed to pay the city a general annual fee starting with $500,000 and going up to $700,000. Another part of the contract entitled the company to credit for the general annual payment against any "taxes or assessments" imposed by the city for anything other than real estate or dividends.

In 1923 the Philadelphia Rural Transit Company was formed as a PRT subsidiary to run busses. The city placed a charge of $50 a year on each bus. The company paid it regularly from 1924 to July 1, 1939, in advance. Then PRT was reorganized and PTC set up to take over the system, including the busses. The idea that the new company need not pay the bus fees was then evolved, and the city sued.

Texas

Power Pool Planned

THE formation of a proposed gigantic power pool to alleviate the shortage of power for the operation of defense industries in Texas was announced at Fort Worth last month as plans were completed for the filing of applications with the Public Works Administration for eight projects on the Brazos, Lower Colorado, and Guadalupe rivers costing approximately $40,000,000.

The projects include seven new dams and a "stand-by" steam plant, which are expected to produce 125,000 more kilowatts of electric power for the use of a number of defense industries.

Representatives of the Brazos River Reclamation and Conservation District met at Fort Worth with Harold G. Tuftyn, Washington, D. C., principal engineer of the power division of Defense Public Works, and officials of the regional public works office at Fort Worth, and completed the power pool arrangements.

Gas Utilities Director Named

HERMAN JONES of Austin, former legislator from Decatur, Wise county, last month was named director of the gas utilities division of the state railroad commission, effective August 15th, at a salary of $5,000 a year.

Jones was named by Olin Culberson and Jerry Sadler, a majority of the commission, after S. W. Breeding of Dallas, appointed several weeks ago, advised the commission he could not accept the place because of business reasons.

Senator Clay Cotten was elected to the place soon after Sadler was inducted three years ago, but never qualified and continued as a member of the state senate. The position was vacant many months except for the acting director.

Jones served two terms in the house and moved to Austin in 1932. He has since resided there while practicing law.

SEC Asked to Hear Case

MUNICIPAL officials of Dallas took another possible utility controversy to Washington on August 15th when they petitioned the Securities and Exchange Commission for a hearing on a proposal of the Dallas Railway & Terminal Company to acquire the Oak Cliff property of the Northern Texas Company. Utilities Supervisor Frank R. Schneider obtained a secret session of councilmen called hurriedly to discuss the proposal and it was approved a few minutes later in open meeting.

Schneider said he would seek an interpretation of the effect the proposal will have on the street car company's property value for rate-making purposes. He said the Oak Cliff properties to be acquired are listed for rate-making purposes at $2,500,000, but the company was offering common stock worth $1,540,000 for it. Schneider and City Attorney Kucera were authorized to take any necessary steps.

Utah

Rate Cut Proposal Filed

NEW rate schedules for combination commercial service and municipal street-lighting service in Salt Lake City, at reductions of approximately $100,000 per year in power charges immediately and ultimate possible reductions of $215,000 per year, were filed on August 11th by the Utah Power & Light Company with the Utah Public Service Commission. The new schedules would become effective September 11th, in so far as the reductions are concerned, and the commission indicated it would not take action objecting to the reductions.

The schedules also included provisions for automatic rate adjustments after January 1, 1942, in the event of increases or decreases in operating costs of the company because of fluctuations in commodity price levels or changes in the amount of taxes paid by the company. The commission withheld a decision on the request for inclusion of these adjustment clauses.

The commercial schedules would provide for reduction of rates through uniformity of wiring and metering to all customers "whose service and wiring will permit delivery and metering at one point," numbering about 5,000 customers who would be immediately benefited, and about 1,000 more who might obtain the reductions in the future by rewiring their business establishments.

Savings to the 5,000 customers would be approximately $81,000 a year, it was indicated, and savings proposed under the municipal street-lighting schedule would amount to an additional $19,000 a year.

Offers Lower Rates

NEW rates for electric power furnished Ogden city for lighting purposes would reduce the annual cost from $38,617 a year, under the present contract, to $32,636 annually, under a new contract proposed to the city commission last month by officials of the Utah Power & Light Company.

The new schedule was presented to the city by George L. Ellerbeck, manager of the Ogden district for the power company; W. J. Critchlow, Jr., division sales manager; and Clarence Vacher, commercial sales manager.

Power Plans Wait Study

UTAH'S power needs still have not been determined, pending decision on several proposed defense plants, and as a result power expansion in the state cannot be planned definitely at present, George M. Gadsby, president and general manager of the Utah Power & Light Company, reported recently after a 2-day conference with officials of the Federal Power Commission and the power division of the Office of Production Management at Washington.

As in the rest of the nation, a decision on power requirements in Utah must await further study and action on such proposed major plants as the alunite plant at Marysville and the steel and pig iron expansion program at Provo. Should these projects be approved, a definite idea of Utah's defense power needs would be given; should they be abandoned, the present tentative outline of power needs would have to be revised downward.

The Latest Utility Rulings

Consolidation to Effect Economies and Single Management Consistent with Public Interest

A CONSOLIDATION of United Electric Light Company, Pittsfield Electric Company, and Turners Falls Power & Electric Company with the Western Massachusetts Electric Company, owner of all the stock of the other companies, was approved by the Massachusetts Department of Public Utilities as consistent with the public interest. An issue of stock to be exchanged for stock of the consolidated companies, without any increase in capitalization, was also approved.

The Massachusetts statute relating to consolidation formerly provided that electric companies operating in the same or contiguous municipalities might consolidate, upon approval of the stockholders, where the facilities for furnishing and distributing electricity would not thereby be diminished and the consolidation and the terms thereof are consistent with the public interest. In 1939 the statute was amended so that now the sole duty of the department is to determine that the consolidation and terms thereof would be consistent with the public interest.

The importance of the revision, said the department, was not in its application to the facts of this case, because the petitioners had shown compliance with the section as in effect at the time of the filing of the petition and as revised, but rather that the policy of the law sanctions the consolidation of electric companies. The department, it was said, is not directed to decide whether the public convenience or public necessity requires or justifies consolidation.

Commenting upon the reasons for approval of the consolidation, the department said:

> It is quite true, as is conceded for the companies, that the immediate savings will not be so large as to effect a reduction in rates but they are sufficient to warrant the decision of the companies to consolidate. There will be one company instead of four, and a single management. Advantages will be gained in the purchase of supplies, the repair and maintenance of plant and equipment, the diminution of the number of reports and returns, the more efficient use of joint facilities, better long-term financing, and in general, which is the immediate objective, a more efficient operation. These advantages are general but obvious. The companies have *de facto* been operating as a single unit in many respects and there is no valid reason why they should not be permitted to operate *de jure* as a consolidated unit in all respects. Even though the savings may not be so large as to bring about rate reductions the company is nevertheless entitled to the benefit of savings and the other advantages which will result from the consolidation and that is a consummation quite consistent with the public interest. Utility companies are charged with the duty of operating efficiently and economically; therefore, they should not be precluded from the performance of that duty simply because of a general but unfounded opposition to consolidations.

It appeared that various amounts of plant investment were required in the case of each of the companies to return $1 of revenue. Therefore, in order that the interests of the several communities presently served by the companies might be adequately safeguarded, it was ordered that the accounts of the consolidated companies be kept as they were before the consolidation, except that reasonable apportionments might be made whenever necessary, subject at all times, however, to the approval of the state department of public utilities. *Re Western Massachusetts Electric Co. et al. (DPU 5834).*

Penalty Imposed for Unauthorized Group and Party Motor Carrier Service

A COMPLAINT filed by one transportation company against another for unauthorized deviations in group and party rates was sustained in part by the Pennsylvania commission and a penalty imposed. The commission, however, dismissed two of the allegations for reasons stated.

One allegation was that the company had transported groups and parties from a point of origin to a destination served by the regular route service of the complainant, and made the return trip in less than one hour after the last scheduled bus of the complainant left the point of destination for the point of origin. When the complaint was filed the rules of the commission prohibited such operation, but since the institution of the proceedings the commission by order had altered its rules so as to authorize the service complained of. Accordingly the commission dismissed these allegations from its consideration.

The respondent was also charged with violating the Motor Vehicle Code by the use of improper license tags on its busses, but the commission did not impose any penalty on account of this violation, since the enforcement of the Motor Vehicle Code had been delegated to the Department of Revenue.

As to an excuse for misconduct based on a contention that the company was coerced under threats of losing its certificate into filing an unfair tariff against its will, the commission said that the record disclosed nothing to corroborate this assertion, which, even if true, was no defense to the company's failure to adhere to its tariff on file with the commission. *Conestoga Transportation Co. v. Penn Highway Transit Co. (Complaint Docket No. 13458).*

Unauthorized Artificial Gas Not to Be Considered In Fixing Natural Gas Rates

AN unusual situation has developed in the litigation of the Ohio Fuel Gas Company involving ordinance rates for natural gas in the city of Columbus. The company was authorized by ordinance to furnish natural gas service at a specified rate and at a fixed minimum heating value. The company, however, as stated by the Ohio Supreme Court, "engaged in the secret and undisclosed practice of mixing manufactured gas with the natural gas and furnishing the combined product," still possessing the specified heat value. The court has now decided that rates should be based upon the cost of natural gas without any allowance for extra expenses involved in furnishing artificial gas.

The rates fixed by the municipality had been contested before the commission [(1939) 32 PUR(NS) 321] and higher rates authorized, but these were unsatisfactory to both the company and the city and appeal was taken to the supreme court. The court upheld the jurisdiction of the commission to review the rates although artificial gas was being furnished instead of merely natural gas as required by the ordinance, but on the question of rate making it said:

> It is obvious that the gas furnished by the company was not unadulterated natural gas, but a combination of natural gas and manufactured gas, not within the contemplation of the city of Columbus or the Columbus gas consumers. Furthermore, this hybrid product was created and distributed surreptitiously, without the knowledge or approval of the city, the users of the gas, or the public utilities commission. Natural gas was called for and, under the circumstances, natural gas should have been supplied—not mixed gas. The company is solely responsible for its action and in our estimation is not entitled to the benefit of any expense incurred in obtaining these manufactured gases. All expenses so incurred should be

wholly eliminated in the determination of a rate base.

In our opinion the most practical manner in which to handle the problem is to reverse the order of the public utilities commission and remand the case, with instructions to fix a rate for the period in dispute on the basis of the natural gas supplied by the company, eliminating entirely from the computation any and all expenses of the company connected with the procurement and distribution of the manufactured inert and reformed gas. This may be done upon the existing record, with additional evidence if necessary.

Ohio Fuel Gas Co. v. Public Utilities Commission (Nos. 27813, 27814).

Shipper at Fault in Demanding Rate Concession

It is as much the duty of the shipper to pay the lawful rate for transportation as it is the duty of the carrier to collect it, said the Washington Department of Public Service in an investigation of rebates by a motor carrier. The record showed that the shipper quoted the rates he would pay, and the carrier accepted them, although he protested and tried to get more. The inference was said to be plain that the shipper dictated the rates that he desired without reference to the proper and lawful tariffs.

Rebates received by shippers, it was said, are unlawful whether received in ignorance or with knowledge, but it seemed plain to the commission that any steady shipper, such as the one in this case, must be rather well informed as to freight rates.

The department was of the opinion that the carrier should be required to collect the full amount of the rebates or undercharges from the shipper and furnish proof that he had done so. The department, it was said, should also transmit the record in the case to the attorney general of the state with a recommendation that action be started in the name of the department, as provided by law, for the collection from the shipper of three times the amount of the rebates received by him from the carrier, or that such criminal action be taken against the shipper as might be deemed proper.

The carrier's permit was suspended for a period of twenty days and he was ordered to ascertain and collect the undercharges and to cease and desist from violating the department's rules. *Department of Public Service v. Trudeau (Order MV No. 35518, Hearing No. 2541).*

Restriction on Charges by Hotels and Telephone Companies Sustained

The appellate division of the New York Supreme Court upheld a judgment and order of the supreme court [(1940) 36 PUR(NS) 8] requiring the New York Telephone Company and certain hotels to make charges for hotel telephone service in accordance with schedules filed with the commission and requiring the telephone company to enforce the terms and conditions of the tariffs. Judge Foster, speaking for the court, said:

For a period of some twenty years there has existed an administrative construction of the public service commission to the effect that telephone service rendered in hotel guest rooms is utility service, and that the rates therefor may be regulated. Connolly *v.* Burleson (NY) PUR1920C 243. While not conclusive an administrative ruling of long standing is entitled to considerable weight even when the subject is not free from doubt. United States *v.* Chicago, N. S. & M. R. Co. (1933) 288 US 1, 77 L ed 583. This ruling has been adopted in principle in other jurisdictions and by other regulatory bodies. Hotel Pfister *v.* Wisconsin Teleph. Co. 203 Wis 20, PUR1931A 489; Re Hotel Marion Co. (Ark) PUR1920D 466; Jefferson Hotel Co. *v.* Southwestern Bell Teleph. Co. (Mo 1936) 15 PUR(NS) 265. We think it is supported by logic and practical necessity if the purposes of the Public

Service Law are to be effectuated. A telephone within a hotel, used to furnish service in connection with outside calls, must be considered as an extension of the telephone company's general system and subject to regulation; otherwise the public will be subjected to a variety of rates concocted under the guise of hotel service and completely unregulated. To avoid such an evil is one of the main purposes of the statute. The fact that outside service is involved in this case distinguishes it from the case of Chesapeake & P. Teleph. Co. *v.* Manning (1902) 186 US 238, 46 L ed 1144, where only intra-hotel service was involved. . . .

In reaching the foregoing conclusion we cannot be concerned with whether hotels make a loss or profit. Neither contingency can alter, or indeed have any effect upon, the principles to be applied. The claim of confiscation as made by some hotels we deem entirely irrelevant. There is no appeal from any order of the commission before us, and in any event, confiscation does not take place until there is a destruction or impairment of a property right. A hotel acquires no property right in utility service which it is not required by law to furnish. Nor can we consider whether the tariff schedules are reasonable or not. Such an issue must be tried elsewhere before we may review it.

Presiding Justice Hill, differing from the majority, expressed the view that the decision should be modified to permit a hotel to make a separate charge in addition to the rates fixed by the commission, the regulated charge being compensation to the hotel to offset the expenses incurred for the maintenance of the private branch exchange and the rates charged to the hotels for the telephone installation in the rooms.

The additional charge, Justice Hill said, is for the personal service and secretarial assistance given to the guest in connection with his use of the facilities, and the hotels should not be required to assume the cost, as the alternative would be a higher rate per room regardless of the use of such services by guests. *People ex rel. Public Service Commision v. New York Telephone Co. et al.*

Business Telephone Classification

A SUBSCRIBER engaged in the insurance business was held by the Wisconsin commission to be properly classified as a business subscriber, to whom business rates would be applicable, where peg counts indicated a substantial use of the telephone for business purposes and where the patron failed to comply with a rule of the telephone company in that he advertised his business. Commissioner Whitney, in a dissenting opinion, held that publishing two advertisements did not constitute "general and persistent advertising" as contemplated by the company rule. He also was of the opinion that there was not a showing of either "substantial" or "major" use of the telephone for business purposes.

The subscriber had formerly lived in a city, and upon moving into rural territory he obtained resident telephone service.

He learned that no directory change would be possible for some time and, therefore, advertised on two occasions to show his new telephone number. *State Long Distance Telephone Co. v. Lean (2-U-1707).*

Commission Cannot Regulate Crossing of Abandoned Street Railway

A COMPLAINT alleging that a street railway crossing below grade was dangerous, unnecessary, and should be abolished was dismissed by the Pennsylvania commission for lack of jurisdiction. The crossing had been constructed by the railway company in 1913. Later the company discontinued service temporarily under commission authority, and after a while its assets were sold at foreclosure sale and an "out-of-existence" affidavit was filed with the department

of revenue of the commonwealth. The commission said:

> Under the facts as above stated, since the railway company did not, on June 1, 1937, the effective date of the Public Utility Law, own or operate in this commonwealth equipment or facilities for transporting passengers or property as a common carrier, it is not a "public utility" as defined in § 2(17) of the Public Utility Law. Furthermore, since street railway operations over the crossings ceased on July 10, 1933, the crossing is a "dead crossing" and, therefore, not within the jurisdiction of the commission.

Department of Highways of Commonwealth of Pennsylvania v. West Side Electric Street Railway Co. (Complaint Docket No. 13487).

Service Need Overcomes Effect of Illegal Operations

THE California commission, in authorizing motor carrier service by an operator who had been conducting operations unlawfully in the past, held that the public need for the service was sufficiently great to overcome the taint of illegality attached to prior operations, stating:

> It is true that, as a general policy, regard for the law and fairness to competing carriers call for a denial of a certificate to such an operator. The application of this principle is always subject, however, to the convenience and necessity of the public, the promotion of whose interests is of paramount concern. While it appears that applicant has regularly served the general public between the points in question and has accordingly been operating as a highway common carrier without proper authority therefor, it is also true that a compelling public need for his proposed service has been shown. Furthermore, it is not certain that applicant was aware of the illegality of his Los Angeles operations.

Re Gotelli (Decision No. 34187, Application No. 22957).

Other Important Rulings

THE Securities and Exchange Commission denied an application, pursuant to § 2 (a) (8) of the Holding Company Act, for orders declaring the applicant not to be a subsidiary company of specified holding companies owning more than 10 per cent of the applicant's outstanding voting securities, because the applicant failed to show that its management and policies were not subject to a controlling influence by the holding company so as to make it necessary or appropriate in the public interest and for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in the act upon subsidiary companies. It was said that even if the commission assumed that any one of the three immediately interested companies might at times differ with the others in matters of policy, that fact was of no moment since the act need not be construed as meaning "that those exercising controlling influence be able to carry their point." *Re Moreau Manufacturing Corp. (File Nos. 31-461, 31-472, Release No. 2868).*

The California commission held that where rates were voluntarily reduced it did not necessarily follow that reparation should be awarded on shipments forwarded before the reduced rates were made effective; that in submitting rate comparisons it is upon the party offering such comparisons to show that they are a fair measure of the reasonableness of the rates in issue; and that a defendant's offer to satisfy a complaint cannot be construed as an admission, or proof, that any rate in excess of the subsequently established rate was unreasonably high. *Mettler v. Southern Pacific Co. (Decision No. 34115, Case No. 4485).*

The California commission, in authorizing the operation of a passenger stage service, said that while there was some doubt whether the service could be conducted at a profit, the public should nevertheless be given opportunity to demonstrate, through their patronage, that there was justification for its establishment. In the same case the operator was required to post a conspicuous notice to the public that the service was being subsidized by a real estate subdivider in order to create public confidence in the enterprise. *Re Nolan et al. (Decision No. 34216, Application No. 23720).*

The Federal District Court, Southern District of New York, sustained a complaint by the Interstate Commerce Commission in an action to restrain the operation of scheduled trips over regular routes where a motor transportation company was authorized to operate only in round-trip charter operations over irregular routes, notwithstanding a contention that the action was in effect a petition to review or enforce an order of the Interstate Commerce Commission. The court concluded that the action was to restrain any further violation of the Motor Vehicle Act. *Interstate Commerce Commission v. Fordham Bus Corp. 38 F Supp 739.*

The Federal District Court, Northern District of Illinois, held that certain transportation companies had not violated the provisions of the Motor Carrier Act by protecting themselves against their legal liability to shippers for loss or damage to cargoes transported in excess of the minimum limits of insurance coverage required by the Interstate Commerce Commission, where a complaint was directed against policies covering cargoes for a certain large shipper. It was said that in order to show unreasonable preference or advantage it must be shown that a preference, advantage, or discrimination had been given to the shipper and also that the shipper was in the same class with other shippers who had not received the alleged preference, advantage, or discrimination. *Interstate Commerce Commission v. Kraft Cheese Co. et al. 38 F Supp 764.*

The California commission declared that a deed of trust executed without permission was ineffective to impose a lien upon public utility property and that notes issued without its authority were void in a proceeding where the commission denied authority to transfer a half interest in a certificate and in water utility property to a partner in the absence of evidence of public interest. *Re Henneken (Decision No. 34240, Application No. 24131).*

The Pennsylvania commission held that it had no authority to order *nunc pro tunc* that a filed tariff be suspended where the tariff had become effective pursuant to the statute which allowed the commission "at any time before it becomes effective" to suspend the operation of any tariff stating a new rate. *Phoenix Glass Co. et al. v. Peoples Natural Gas Co. (Complaint Docket Nos. 13475, 13529).*

The supreme court of Colorado held that an irrigation company, as a water carrier, is a public utility, and, as such, there is the implication that its system of carriage and distribution shall be operated under reasonable rules and regulations. *Putnam Ditch Co. v. Bijou Irrigation Co. 114 P(2d) 284.*

Recently a railway company, when its freight rate structure was attacked, set up the defense that if the assailed rates were reduced it would have the effect of disrupting the rate structure generally, but the Ohio commission upset that defense when it said that if it be found that freight rates are unreasonable or otherwise unlawful, the situation should be corrected regardless of the fear that other rates may be affected. *Ohio Calcium Co. Inc. v. Baltimore & Ohio Railroad Co. et al. (No. 11677).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTED FROM

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 39 PUR(NS) NUMBER 4

Points of Special Interest

Titles and Index

TITLES

INDEX

UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

Detroit Edison Company

v.

Securities and Exchange Commission

[No. 8735.]

(119 F(2d) 730.)

Appeal and review, § 28.1 — Decisions of Securities and Exchange Commission — Conclusiveness of findings — Scope of review.

1. Findings of fact by the Securities and Exchange Commission are, upon a judicial review of a Commission order, conclusive if supported by evidence, but the court may examine the whole record and ascertain for itself whether there are material facts not reported by the Commission, p. 202.

Appeal and review, § 68 — Determination by reviewing court — Securities and Exchange Commission.

2. The circuit court of appeals, upon reviewing an order of the Securities and Exchange Commission, has full power to settle a controversy, without further delay, without referring the matter to the Commission for additional findings, where the court upon an examination of the whole record finds substantial evidence relating to facts not reported by the Commission from which differing conclusions may be drawn, and where the interests of justice require that the controversy be settled without further delay, p. 202.

Statutes, § 11 — Construction — Certainty as to provisions.

3. The Holding Company Act should be so construed that those affected by it may be certain of the rules of conduct required of them under its provisions, p. 204.

Statutes, § 11 — Construction — Purpose of enactment.

4. The words and phrases used in the Holding Company Act should have a rational construction with common sense, and the act as a whole should be construed to carry out the purpose of Congress in its enactment, p. 204.

Statutes, § 11 — Construction — Congressional intention.

5. The most rational method of interpreting the will of Congress is by exploring its intention at the time a questioned law was made, by signs the most natural and probable, and these signs are either the words, the context, the subject matter, the effect and consequences, or the spirit and reason of the law, p. 204.

Statutes, § 11 — Construction — Words used — Meaning.

6. Words used in a statute are generally understood in their usual and most ordinary signification, not so much regarding their grammar as their general and popular use, p. 204.

Statutes, § 11 — Construction — "Controlling influence" — Meaning.

7. The phrase "controlling influence" varies in its meaning according to circumstances, and the rule applies that where the meaning of a phrase is dubious in any setting, the court may establish the meaning by the context, p. 204.

Intercorporate relations, § 14.1 — Affiliated companies — "Controlling influence" under Holding Company Act.

8. The Holding Company Act undertakes to bring within its ambit all subsidiaries subject to "controlling influence" of a parent, and this phrase should be construed in the light of the purpose of the act of which it is a part, and when understood in this setting and in the light of its ordinary signification, it means the act or process or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action or exercising restraint or preventing free action, p. 205.

Intercorporate relations, § 14.1 — Affiliated companies — "Controlling influence" under Holding Company Act.

9. The phrase "controlling influence" as used in the Holding Company Act does not necessarily mean that those exercising controlling influence must be able to carry their point, but a controlling influence may be effective without accomplishing its purpose fully, p. 205.

Intercorporate relations, § 6 — Discretion of Federal Securities and Exchange Commission — Question of controlling influence.

10. Congress, in recognition of the various types of corporate control, imposed by the Holding Company Act a wide discretion in the Securities and Exchange Commission in determining what is "controlling influence" of a parent over a subsidiary public utility, p. 205.

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence.

11. The fact that a parent company has abandoned some of the characteristics of "controlling influence" over a subsidiary at the time of a hearing does not require the Commission to disregard prior interrelated activities, in determining whether there is a "controlling influence," where there is no showing that its latent power to resume such control has been extinguished, p. 206.

Statutes, § 19 — Construction — Provisos and exceptions.

12. Provisos and exceptions in statutes must be strictly construed and limited to objects fairly within their terms, since they are intended to restrain or except that which would otherwise be within the scope of the general language, p. 206.

Intercorporate relations, § 19.21 — Holding company regulation — Subsidiary status — Burden of proof.

13. A company applying for an order declaring that it is not a subsidiary of a holding company under § 2(a) (8) of the Holding Company Act, 15 USCA § 79b(a) (8), has the burden of proof to bring itself within the exception of the statute, p. 206.

Intercorporate relations, § 19.21 — Holding company regulation — Subsidiary status — "Public interest."

14. The phrase "public interest" as used in § 2(a) (8) of the Holding Company Act, 15 USCA § 79b(a) (8) (providing for a Commission or-

der that a company is not a subsidiary of a holding company, dependent upon the question of "public interest"), means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility, and the phrase is not to be construed as requiring the Commission to find that the conduct of the applicant's business has or will affect the public adversely, p. 206.

Intercorporate relations, § 19.21 — Holding company regulation — Status as subsidiary.

15. The prime factors in determining statutory exemption under § 2(a) (8) of the Holding Company Act, 15 USCA § 79b(a) (8) (relating to status as a subsidiary), are the size and extent of the company involved, the intercompany relationship, the distribution of its securities and the opportunity presented because of the relationship between the parent and subsidiary for excessive charges for services, construction work, equipment and materials, and the transactions entered into in which evil may result because of the absence of arm's-length bargaining or restraint of free and independent competition, p. 206.

Intercorporate relations, § 14.1 — Holding company regulation — Status as subsidiary — Controlling influence.

16. No error was found in the denial by the Securities and Exchange Commission of an exemption from the Holding Company Act under § 2(a) (8), 15 USCA § 79b(8) (relating to subsidiary status), in view of past transactions of the subsidiary with its parent company and a continuing opportunity for resumption of such activities and the extent of the subsidiary's business and the widely scattered ownership of its stock, p. 206.

Appeal and review, § 18 — Questions not raised below.

17. A company which has applied to the Securities and Exchange Commission for an order excluding it from the operation of § 2(a) (8) (a) of the Holding Company Act (relating to subsidiary status), but not asking for exclusion from the provisions of the Holding Company Act in question because of the intrastate character of its business, cannot successfully urge in a proceeding to review the order of the Commission that the order is void because not supported by jurisdictional findings and because it is evident from the face of the record that the company is not subject to the provisions of the act, p. 207.

Procedure, § 30 — Necessary findings — Jurisdiction.

18. It is unnecessary for the Securities and Exchange Commission to make any specific jurisdictional findings where jurisdictional facts appear in an application for a declaration as to status under § 2(a) (8) of the Holding Company Act, 15 USCA § 79b (8), p. 207.

Constitutional law, § 2 — When question decided — Prematurity.

19. The United States courts, in the exercise of their jurisdiction to consider the constitutionality of a Federal statute, will not anticipate a question of constitutional law in advance of the necessity of deciding it or formulate a rule of court broader than the precise facts to which it is applied, p. 207.

Constitutional law, § 4 — Estoppel to raise question — Application under statute.

20. A company applying for a declaration of status under § 2(a) (8)

of the Holding Company Act, 15 USCA § 79b (8), may not properly challenge the validity of the statute, p. 207.

Intercorporate relations, § 14.1 — Corporate control — Holding Company Act.
Discussion, by circuit court of appeals, of seven types of control under the Holding Company Act, p. 206.

[May 12, 1941.]

PETITION *to review an order of the Securities and Exchange Commission, pursuant to § 24(a) of the Holding Company Act, 15 USCA § 79(6), denying an application for an order pursuant to § 2(a) (8) of the act, 15 USCA § 79b (a) (8), declaring petitioner not to be a subsidiary of another company; petition denied. For decision by the Securities and Exchange Commission see (1940) 35 PUR(NS) 65.*

APPEARANCES: Paul W. McQuillen, of New York city, and Oscar C. Hull, of Detroit, Mich. (Sullivan & Cromwell, of New York city, and Oxtoby, Robison & Hull, of Detroit, Mich., on the brief), for petitioner; J. Leonard Townsend, of Washington, D. C. (Chester T. Lane, Christopher M. Jenks, Lawrence S. Lesser, J. Leonard Townsend, and Stanley L. Kaufman, all of Washington, D. C., on the brief), for respondent.

Before Hicks, Simons and Hamilton, Circuit Judges.

HAMILTON, C. J.: This is a petition of the Detroit Edison Company, a New York corporation, with its principal office and place of business in the city of Detroit, Michigan, to review an order of the Securities and Exchange Commission, pursuant to § 24(a) of the Public Utility Holding Company Act of 1935, 49 Stat. 834, 15 USCA § 79x.

The order complained of denied the application of the petitioner to the Commission for an order pursuant to § 2(a) (8) of the act, 49 Stat. 804, 15 USCA § 79b(a) (8), declaring it not to be a subsidiary of the North American Company.

The provisions of the statute involved are set forth in the margin.[1]

[1] "'Subsidiary company' of a specified holding company means—

"(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

"(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title [chapter] upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more inter-

The petition for exemption was filed March 3, 1937, and the applicant requested the Commission to declare that it was not a subsidiary company of the American Light and Traction Company, Gardner & Brown, the North American Company, the United Light and Power Company, or the United Light and Railways Company.

Gardner & Brown disposed of their stock holdings in the petitioner before the hearing by the Commission, and the Commission found the petitoner was not a subsidiary of the United Light and Power Company.

The American Light & Traction Company is a subsidiary of the United Light and Railways Company, which in turn is a subsidiary of United Light and Power Company. The American Light and Traction Company owns and controls 20.27 per cent of petitioner's outstanding voting stock and the North American Company owns 19.28 per cent of its outstanding voting stock, the latter company only being involved in these proceedings. After hearing before a trial examiner, at which testimony was taken, the trial examiner filed his report and findings of fact with the Commission. Petitioner filed exceptions thereto, and thereafter the matter was orally argued before the Commission. The Commission filed its opinion together with an order granting the application conditionally with respect to the United Light & Power Company, but denied such application with respect to the North American. The findings of the Commission on which its order is based are substantially as follows:

In 1902, White, then a vice president of North American, proposed to Alex Dow, former president of petitioner and now a director, then manager of the Edison Illuminating Company and the Peninsular Electric Light Company, both of Detroit,

mediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying, or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to insure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term 'applicant' means only the company in respect of which the order is to be entered."

Michigan, and being the principal electric utilities companies operating in that city, that the stock of both companies be sold to North American Company, a holding company of New York. Dow and the president of Edison Illuminating Company constituted themselves a committee to study the offer and urged the stockholders to accept it, which they did and North American, acting through a syndicate, which was formed for the purpose, acquired all the stock of both companies.

North American paid Dow for his services in connection with the purchase of the Edison Illuminating Company $10,000 and agreed he would be employed to manage the Detroit properties by that company, or a new one to be organized. This agreement disclosed the anticipation that Dow would remain indefinitely in the service.

On January 17, 1903, North American caused the incorporation of petitioner and its first organization meeting was held in the offices of North American, and its officers and directors, all designated by North American, were duly installed. The legal details of the incorporation and organization were handled for North American by Sullivan & Cromwell, then, and now, its general counsel.

At the organization meeting North American, on behalf of its syndicate, offered to sell petitioner all the stock of the Illuminating and Peninsular Companies, real estate at Delray, Michigan, plans and specifications for an electric generating plant and the right to contracts for the construction of such plant, also to provide petitioner $1,190,000 in cash for construction purposes, the consideration being $3,000,000 of Edison's first mortgage 30-year, 5 per cent bonds, 50,000 shares of its capital stock and the right to suggest changes in the construction plans, which offer was accepted at the first meeting of the board of directors. The syndicate was then dissolved and North American retained 14.73 per cent of the petitioner's outstanding voting securities, which holdings have since fluctuated from a low of 6.45 per cent in 1924 to a high of 23.52 per cent in 1931.

Petitioner's board of directors has, from its incorporation, consisted of nine members, the first of whom were selected by North American and were Messrs. Wetmore, Sheldon, Bulkley, White, Coffin, Jaretski, Dow, Russell, and Bowen, the first three then being directors and members of the executive committee of North American and White a vice president who had suggested the deal between petitioner and North American. Wetmore, who was petitioner's first president was also president of North American. Jaretski was a partner in the law firm of Sullivan & Cromwell, general counsel for North American, Dow, manager of the underlying properties and to whom North American had paid $10,000 for his services to the syndicate. Coffin was president of General Electric Company and became a director of North American in 1905, in which capacity he served that company and also the petitioner until 1920. Russell and Bowen were Detroit businessmen with minor financial interests in petitioner.

The original board served until 1908 when Smithers, a director of

North American and member of its executive committee, replaced White. In 1910 Russell was succeeded by Caufield, a friend of Wetmore. The next change was in 1912 when Caufield was replaced by Campbell, the then president of North American. In 1912 Wetmore retired as petitioner's president and Dow was elected to that office. In 1913 Wetmore was succeeded on the board by Jenks, a Detroit businessman. Marshall, who had been associated with Dow in the early days of the Illuminating Company, was elected petitioner's vice president in 1913 which position he held until 1940. In 1914 Campbell was replaced by Mortimer on petitioner's board of directors, and also as president of North American. In 1915 Dow became a director of North American and a member of its executive committee, which posts he held until 1921.

Four changes occurred in 1920: Williams succeeded Mortimer as chief executive of North American and replaced him as a member of petitioner's board; Fogarty, an officer and director of North American, was elected a director but soon resigned and was succeeded by Marshall, vice president of petitioner and Coffin was replaced by Rice, who then was president of General Electric Company.

In 1923 Williams retired as North American's chief executive officer and was replaced on petitioner's board by the then vice president, Gruhl. In that year also Pomeroy was succeeded by Close, a director of Bankers Trust Company. In 1926 Jaretski was succeeded by Victor, a partner in the law firm of Sullivan and Cromwell. The following year Victor was replaced by Dulles, another member of the Sullivan and Cromwell partnership, and who, from 1930 to 1938, was a North American director. Gruhl died in 1932 while president of North American and was succeeded by Dame, both as North American president and director of petitioner, who soon died and was succeeded by Fogarty in both posts. In 1936 Rice was replaced by Gushee, a member of petitioner's operating staff. Just prior to the hearing by the Commission, Gushee was given a leave of absence by petitioner and resigned as director to accept employment with Union Electric Company of Missouri a subsidiary of North American.

Of the nine members of the board which originally elected Dow president, seven had been initially designated as directors of petitioner by North American and two were the president and a director of North American. In 1940 Dow was succeeded as president by Marshall, petitioner's vice president and an associate of Dow in the old Illuminating Company, but continued to act as a director. The same board of directors that elected Dow president, originally named Marshall as vice president.

Of the eight directors presently serving petitioner, Bulkley and Dow have served continuously since North American chose them on the first board; Fogarty, a third member, is North American's president, Dulles is a partner in the law firm of Sullivan and Cromwell, general counsel to North American in legal matters pertaining to petitioner's organization and general counsel for petitioner. Holden and Seyburn, two of the other directors are Detroit businessmen,

another Tompkins, a director in Bankers Trust Company and Marshall is president of petitioner.

The personal stockholdings of petitioner's directors and of its officers are negligible. None of petitioner's stockholders, other than North American, ever appear to have designated any of petitioner's officers or directors and none of petitoner's officers or directors appear to have had any relationships to any substantial stockholder of petitioner except North American.

A chronological statement of the succession of petitioner's presidents and directors indicates that since its organization in 1902, North American has maintained a position of importance and influence in the affairs of petitioner based on stock ownership or historical association or both. Two members of the present board trace their association with petitioner to their initial designation as such by North American while two others are directly associated with North American at the present time. Petitioner's present president, also a director, was selected as its vice president by a board made up in its entirety of North American selection or affiliation. At least half, and perhaps a majority, of the present board are either associated with North American or derive their connection with petitioner from North American.

The syndicate of 1902 which, under the auspices of North American, organized the petitioner, seems to have had a continuing position in its affairs. Of the $41,984,000 bonds issued by petitioner from 1904 to 1921, approximately $33,565,500 were underwritten by the three investment firms which were among the more important participants in the syndicate. The same three firms headed each of the eleven underwriting groups that distributed $218,016,000 of petitioner's bonds between 1924 and 1938.

The petitioner in 1920 authorized the issuance of approximately 55,000 shares of its stock which, under Michigan law, was required to be sold at par, but because of the instability of market conditions at the time, none could be sold at that price. In 1921, petitioner sold 27,000 of these shares to North American at par, or $100 per share, for public distribution, the petitioner agreeing to pay $7 commission for each share sold up to 20,000 and $3 a share for the balance. North American was also given an option to purchase 3,000 shares at the same price, to be distributed without commission. Petitioner and North American agreed to work together for as useful and widespread a market for the stock as possible. In 1922, North American marketed the 27,000 shares and received $161,000 from petitioner in commissions. North American disposed of the stock, however, at more than par and realized a net profit on the transaction of approximately $212,000. It exercised its option to purchase the additional 3,000 shares but retained them for its own portfolio, petitioner waiving the distribution requirement.

In 1923, petitioner again offered to the public 35,423 additional shares of its stock, which was underwritten by a syndicate headed by Bankers Trust Company. This group included North American and two of the three investment houses which headed the

bond syndicates. In 1924, petitioner offered 14,863 more shares and Bankers Trust Company again led the syndicate which included the same two investment houses. North American did not participate, although invited.

From the time of petitioner's organization, to 1935, North American served as its fiscal agent; since that time Bankers Trust Company has so acted. Petitioner has always maintained offices in New York which have been located in North American's building at all times, except from 1909 to 1912. For some years petitioner participated with North American and its acknowledged subsidiaries in joint purchasing contracts. The petitioner withdrew from such arrangements in 1929 when its own purchasing power entitled it to similar discounts.

For many years petitioner has designated representatives to the Station Advisory Committee, an organization consisting of a group of engineers meeting to exchange ideas on operating methods, costs of properties, and technical developments. All other companies participating in the activities of the committee are statutory subsidiaries of North American.

Prior to 1925, United Light and Power Company held none of petitioner's stock. In that year it began to make substantial purchases in the open market and by 1926 controlled 6.34 per cent of the outstanding voting stock. By 1931, United held as much of petitioner's stock as did North American, which condition has continued to the present.

From 1925 to 1931, North American also made substantial purchases of petitioner's stock, its holdings having dropped to the lowest level in 1924. In 1926, United suggested to petitioner that, as a substantial stockholder, it was entitled to representation on its board, but petitioner's management refused to recognize merit in the suggestion and United was not given representation.

In 1932, United had increased its holdings to 20.26 per cent of petitioner's voting securities and again requested representation on its board and again was refused. This occurred also in 1934, and in 1935 an effort was made to force recognition by attempting to break quorum, but it met with no success and United at the present has no representation on the board and does not participate in petitioner's affairs.

From these facts, the Commission concluded that in the light of petitioner's origin and the unbroken continuity of North American's officers, directors and designees on petitioner's board, that it had failed to carry the burden of proof that it was not a subsidiary of the North American Company, or that it was not necessary and appropriate in the public interest and for the protection of investors and consumers, that the petitioner be subject to the obligations, duties, and liabilities imposed by the present act upon subsidiary companies of registered holding companies.

The petitioner attacks the Commission's order on the following grounds: (1) That the primary evidence, including all reasonable inferences, deductions, and conclusions to be drawn therefrom and considering them in their entirety and relation to each other, sustains the burden of proof resting on petitioner to show there was

neither control nor controlling influence over its affairs by the North American Company and further, if it exercised any influence over the petitioner it was not harmful to the public, investors, or consumers; (2) That the findings of fact by the Commission do not support its order; (3) That the present order is invalid for lack of due process, because the Commission did not find jurisdictional facts, did not decide essential questions of law, and did not rule upon petitioner's request for findings and its exceptions presented to the intermediate report of the examiner; (4) That the order is invalid because the petitioner is not subject to the provisions of the act in question.

[1, 2] The statute conferring jurisdiction on this court to review the present order authorizes it to affirm, modify, or set aside such order in whole or in part. 15 USCA 79x, 49 Stat. 834. Upon such a review the Commission's findings of fact are conclusive if supported by evidence, but the court may examine the whole record and ascertain for itself whether there are material facts not reported by the Commission and if there be substantial evidence relating to such facts from which differing conclusions may be drawn and the interests of justice require that the controversy be settled without further delay, the court has full power under the statute to do so without referring the matter to the Commission for additional findings. Federal Trade Commission v. Curtis Publishing Co. (1923) 260 US 568, 580, 67 L ed 408, 43 S Ct 210.

Since the primary facts in the record present no substantial dispute and the inferences, deductions, and conclusions to be drawn therefrom are not substantially variable, we consider all the facts in determining the appropriatenes of the questioned order. This necessitates the statement of additional important primary facts, some of which petitioner claims the Commission did not duly weigh in its findings of ultimate facts. At the time of the hearing, petitioner was engaged exclusively in the business of furnishing light and power and rendering incidental public services to the Detroit, Michigan, area. It had a capital structure of $350,000,000 with outstanding capital stock, all of one class, of $127,226,000, with equal voting rights, none of it within a voting trust and with no charter or statutory provision for cumulative voting. It owns directly all of its properties and franchises and is subject to regulation by the Michigan Public Utilities Commission. It generates its own electric energy, manufactures its own gas, makes its own steam, and does its own buying of equipment, material, supplies, and miscellaneous articles.

Prior to August 26, 1935, the date of the passage of the Public Utility Holding Act, the North American Company received $45,000 annually from 1925 until 1935, for acting as fiscal agent for petitioner. All of the business of petitioner transacted in the state of New York during this period was carried on in the offices of North American. For the sole purpose of avoiding the application of the Public Utility Holding Act, petitioner, in November, 1935, discontinued the use of the North American Company's offices and established its own on a different floor in the same building

and put in charge thereof a former employee of the North American, who thereafter discontinued his connection with it. All officers of petitioner who were also officers of the North American Company at that time, resigned and petitioner's stock ledgers, its printed proxies and annual reports to stockholders were removed from the North American offices to petitioner's new offices and thereafter no mail was either sent or received for petitioner through the North American offices. It also thereafter discontinued all interoffice relationship with the North American and by mutual consent, all existing contracts or interrelated services between the two companies were abandoned.

In 1924, when the United Light & Power Company went into the open market to purchase the shares of the petitioner with the object of influencing its affairs, petitioner's president, Alex Dow, issued a statement to the Wall Street Journal, which was also carried on the ticker of the New York Stock Exchange, wherein he publicly called attention to the fact that a holding company was seeking to acquire control of petitioner and if such holding company could buy control at $150 per share, which he doubted, it would mean an investment by the purchasers of $20,000,000 more than had gone into petitioner's property and the purchasers would not get a return upon their money. Immediately after this statement, North American Company went into the open market and bid against the United Light and Power Company and purchased shares of petitioner's stock at prices ranging from $130 to $212 per share.

The petitioner's stock is widely distributed, both in this country and abroad. It is, and has been, the practice of the company to organize a proxy committee each year named by its directors, under the form of which the committees have always been instructed to vote for retiring directors if they were available. Between 1903 and 1910, an average of 80 per cent of stockholders' votes cast at meetings were by proxy and since that time the percentage has varied from 90 per cent to 100 per cent.

Petitioner is a strong, successful, and well-managed institution and bears an excellent reputation in the communities where it does business, for honesty and fair dealing with its investors, employees, and consumers. Its executive officers devote all their time to the affairs of petitioner and at the time of the hearing and had no official connection with the North American Company.

It is conceded by the parties that the North American Company is a registered holding company under § 2(a)(7) of the act and the undisputed facts show that petitioner is prima facie a subsidiary of the North American Company under the provisions of § 2(a)(8)(A) of the act. Under this section, a subsidiary may be exempted from the provisions of the act if the Commission shall by order declare that such subsidiary is not controlled, directly or indirectly, by a parent company, either through one or more intermediary persons or by any means or device; that the applicant is not an intermediary company through which such control of another company is exercised, and that the management or policies of the subsidiary are not subject to a controlling influ-

ence, directly or indirectly, by a parent company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers that the subsidiary be subject to the provisions of the act.

There is no evidence in the record that petitioner is controlled, directly or indirectly, by the North American Company, either through one or more intermediary persons or by any means or device whatsoever, and likewise there is no evidence in the record that petitioner is an intermediary company through which such control of another company is exercised. Therefore, the single question is, did the petitioner carry the burden of proof resting on it to show that neither its management nor policies were subject to the controlling influence, directly or indirectly, of the North American Company, so as to make it necessary in the public interest that it be subject to the provisions of the act.

We are here dealing, not with an abstract idea, but a concrete rule adopted by Congress for the guidance of business enterprises which affect the economic organization of our society.

[3, 4] The act should be so construed that those affected by it may be certain of the rules of conduct required of them under its provisions. Because of the imperfection natural in language and the obscurity and confusion so difficult to avoid in the use of words, it is sometimes hard to determine the exact meaning of phrases or words used in statutes. The words and phrases used in the present act should have a rational construction with common sense and the act as a whole should be construed to carry out the purpose of the Congress in its enactment. Because of the nature of the complex subject with which the Congress was dealing, it could not promulgate a code so specific as to adapt itself to all possible contingencies and evils, which it was seeking to prevent or regulate. It was therefore necessary to delegate power to the Commission with broadly defined limits to determine the controlling relationship between holding companies and their subsidiaries.

[5–7] The most rational method of interpreting the will of Congress is by exploring its intention at the time the questioned law was made, by signs the most natural and probable; and these signs are either the words, the context, the subject matter, the effect and consequences, or the spirit and reason of the law. With respect to the words, they are generally understood in their usual and most ordinary signification, not so much regarding their grammar as their general and popular use. The phrase "controlling influence" varies in its meaning according to circumstances, and the rule applies that where the meaning of a phrase is dubious in any setting, we may establish the meaning by the context.

At the time of the enactment of the present statute, it was recognized by the Congress that the holding company was the most effective device theretofore used for combining, under single control and management, the properties of two or more hitherto independent corporations and it is also recognized that such companies were large-

ly exempt from state regulation, because in many cases, they extented their activities beyond the jurisdiction of any one state. It also recognized the separation of ownership of property represented by securities emitted by corporations or trustees, from any direct accountability whatever for its prudent and efficient management. It also recognized that underlying public utility corporations were frequently controlled through pyramided corporate structures, the top corporation often having but a small investment in the capital structure of the underlying operating company, but through control of directors was enabled to direct the use of the assets and earnings of subsidiaries.

[8, 9] The Congress recognized the necessity in the public interest of the regulation of public utility holding companies and their subsidiaries, such regulation by the states, in its judgment being inadequate. It also found as a fact that internal and private control over the operation of the business of such enterprises, had in some cases resulted in serious loss to the holders of their securities, deterioration of their physical properties and a marked impairment of the ability of such institutions to perform their functions as public servants. 15 USCA § 79a, 49 Stat. 803; Electric Bond & Share Co. v. Securities and Exchange Commission (1938) 303 US 419, 442, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105. It proposed to support, as far as possible, the form of such a company on one side and on the other to take precautionary measures to prevent abuses, and to this end it took under public supervision both the good and bad. The present act undertakes to bring within its ambit all subsidiaries subject to "controlling influence" of a parent. This phrase should be construed in the light of the purpose of the act of which it is a part, and when understood in this setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising restraint or preventing free action. The phrase as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully.

[10] Corporate wealth has become so widely distributed that control over it has tended to become more and more remote from ownership. Ownership of corporate shares without appreciable corporate control and control of corporate wealth without appreciable ownership has become a natural phenomenon of our economic system. Seven major types of corporate control were extant when the present act was passed and others may develop from the urge of individuals to avoid public regulation. Congress recognized this condition, and the present act imposes a wide discretion in the Commission in determining what is "controlling influence" of a parent over a subsidiary public utility. However, this part of the present act has its guide post, which prevents the Commission from exercising arbitrary power in enforcing it.

The types of control referred to are: (1) through complete ownership

of capital stock, (2) a majority ownership, (3) through a legal device without majority ownership, such as pyramiding through holding companies or a large issue of nonvoting stock with a comparatively small issue of stock with voting rights, or voting trusts, (4) minority control, which exists when comparatively few shares of corporate stock are in the hands of one group and the remainder widely scattered, (5) management control, which exists where all the stock is so widely distributed that no stockholder takes sufficient interest in the affairs of the corporation to influence or control it, (6) proxy control through committees, (7) through interlocking corporate officers or directors.

The evidence in the case at bar shows marked features and significant incidences of the latent power of the North American Company to exercise a controlling influence over the petitioner. Compare Natural Gas Pipeline Co. v. Slattery (1937) 302 US 300, 307, 82 L ed 276, 21 PUR (NS) 255, 58 S Ct 199; United States v. Union P. R. Co. (1912) 226 US 61, 96, 57 L ed 124, 33 S Ct 53; Southern P. Co. v. Bogert (1919) 250 US 483, 492, 63 L ed 1099, 39 S Ct 533; Hyams v. Calumet & Hecla Mining Co. (1915) 221 Fed. 529; Moulton v. Field (1910) 103 CCA 77, 179 Fed 673; Rochester Teleph. Corp. v. United States (1939) 307 US 125, 145, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754.

[11] The fact that the North American Company had abandoned some of the characteristics of "controlling influence" over the petitioner at the time of the hearing, did not require the Commission to disregard prior interrelated activities. There is no showing that its latent power to resume such control has been extinguished. The relationship is such that they may enter into similar activities in the immediate future. United States v. Trans-Missouri Freight Asso. (1897) 166 US 290, 308, 41 L ed 1007, 17 S Ct 540; National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co. (1939) 308 US 241, 84 L ed 219, 60 S Ct 203.

[12, 13] Provisos and exceptions in statutes must be strictly construed and limited to objects fairly within their terms, since they are intended to restrain or except that which would otherwise be within the scope of the general language. The burden rested on petitioner to bring itself within the exception. Schlemmer v. Buffalo, R. & P. R. Co. (1907) 205 US 1, 27, 51 L ed 681, 27 S Ct 407.

[14–16] Petitioner urges on us that the evidence in the record, when fairly appraised and weighed, shows a lack of necessity or appropriateness in the public interest or for the protection of investors or consumers, that it be subjected to the obligations, duties, and liabilities of the present act. To this contention we cannot agree. The phrase "public interest" as used means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility. The phrase is not to be construed as requiring the Commission to find that the conduct of the applicant's business has or will affect the public adversely. The statute contemplates action prospectively. It is a preventive

measure intended to regulate action before the interests of those concerned are adversely affected. The prime factors in determining statutory exemption are the size and extent of the company involved, the intercompany relationship, the distribution of its securities and the opportunity presented because of the relationship between the parent and subsidiary for excessive charges for services, construction work, equipment, and materials, and the transactions entered into in which evil may result, because of the absence of arm's-length bargaining or restraint of free and independent competition. Giving due weight to the past transactions of petitioner with the North American and the continuing opportunity for the resumption of such activities and the extent of the petitioner's business and the widely scattered ownership of its stock, the Commission committed no error in denying petitioner exemption from the present act.

[17–19] Petitioner insists that the order of the Commission is void because not supported by jurisdictional findings and urges on us that it is evident from the face of the record that petitioner is not subject to the provisions of the present act. It predicates this issue on the alleged fact that its business activities are purely intrastate and that the Congress lacked the power to bring it within the ambit of national regulation.

The issue which petitioner seeks to raise is without merit. Its application to the Commission prayed only that it be excluded from the operation of § 2(a) (8) (A). It did not ask for exclusion from the provisions of the act in question because of the intrastate character of its business. The petitioner stated in its application to the Commission that the North American owned 19.2 per cent of its outstanding voting stock and that the American Light & Traction Company owned 20.2 per cent. It also stated stated that each of these companies was a holding company within the terms of the act. Jurisdictional facts appearing in its application, it was unnecessary for the Commission to make any specific jurisdictional findings. As appears from petitioner's application to the Commission, it is prima facie subject to the provisions of the questioned act. The presently tendered issue as to the interstate character of its business raises a constitutional question. The well-established rule applies that in the exercise of their jurisdiction to consider the constitutionality of a Federal statute, the United States courts will not anticipate a question of constitutional law in advance of the necessity of deciding it or formulate a rule of court broader than the precise facts to which it is applied. Liverpool, N. Y. & P. S. S. Co. v. Commissioners (1885) 113 US 33, 39, 28 L ed 899, 5 S Ct 352; Massachusetts v. Mellon (1923) 262 US 447, 488, 67 L ed 1078, 43 S Ct 597; Texas v. Interstate Commerce Commission (1922) 258 US 158, 162, 66 L ed 531, 42 S Ct 261; Tennessee Publishing Co. v. American Natl. Bank (1936) 299 US 18, 22, 81 L ed 13, 57 S Ct 85.

[20] The petitioner has asked for a declaration of status under the provisions of the statute. This is incompatible with a challenge to its validity. The party who invokes the power to

review and annul acts of Congress must be able to show that he has sustained, or is immediately in danger of sustaining, some direct injury as the result of its enforcement. Until some order of the Commission adversely affects the petitioner a challenge to constitutional validity is premature. Allegan v. Consumers' Power Co. (1934) 71 F(2d) 477, 21 PUR(NS) 529; East Ohio Gas Co. v. Federal Power Commission (1940) 115 F (2d) 385, 38 PUR(NS) 397.

Petition denied.

SECURITIES AND EXCHANGE COMMISSION

Re Paul Smith's Electric Light & Power & Railroad Company

[File No. 31-490.]

Re Paul Smith's Hotel Company

[File No. 31-502.]

Re Gas & Electric Associates

[File No. 31-479.]

[Release No. 2854.]

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence.

1. The fact that a statutory subsidiary continuously chooses to avail itself of the counsel and assistance of its statutory parent is entitled to great weight in determining whether the statutory subsidiary is "subject to a controlling influence" in the language of § 2(a) (8) of the Holding Company Act, p. 216.

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence — Veto power.

2. Veto power held by one corporation, which requires its affirmative approval for the undertaking of such corporate activities of another corporation as issuing preferred stock, mortgaging property to secure debt, voluntarily selling franchises of property, effecting consolidations and dissolutions, and making various changes in the certificate of incorporation, is a factor to be considered in determining whether there is a controlling influence within the meaning of § 2(a) (8) of the Holding Company Act, p. 216.

Intercorporate relations, § 14.1 — Affiliated corporations — Controlling influence — Identical directors and officers — Identical stock ownership — Historical relationship.

3. A contention that even if a power company is subject to the control or controlling influence of a parent company, a hotel company is not subject to such control or controlling influence because the parent company has not performed services for the hotel company, is without merit where the directors and officers of both companies are identical, stock ownership of the parent company is substantially identical in both companies, and there has been historically a close relationship of the two companies, p. 217.

Intercorporate relations, § 19.21 — Holding company regulation — Subsidiary status.

4. The standards of § 2(a) (8) of the Holding Company Act do not require findings with respect to whether any of the evils enumerated in § 1 of the act exist at the time of an application for an order declaring a company not to be a subsidiary of a parent company under § 2(a) (8), since the power to bring about the evils is sufficient, p. 217.

Intercorporate relations, § 19.21 — Holding company status.

5. An application filed pursuant to § 2(a) (7) of the Holding Company Act requesting an order declaring applicant not to be a holding company should be denied upon applicant's failure to show that it does not directly or indirectly exercise such a controlling influence over the management or policies of a public utility company as to make it necessary and appropriate in the public interest or for the protection of investors or consumers that applicant be subject to the obligations, duties, and liabilities imposed in the act upon holding companies, p. 218.

Intercorporate relations, § 19.21 — Holding company regulation — Subsidiary status.

6. An application filed pursuant to § 2(a) (8) of the Holding Company Act requesting an order declaring applicant not to be a subsidiary company of a specified holding company, owning more than 10 per cent of the applicant's outstanding voting securities, should be denied when the applicant fails to show that its management and policies are not subject to a controlling influence by such holding company, so as to make it necessary or appropriate in the public interest and for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in the act upon subsidiary companies of holding companies, p. 218.

[June 30, 1941.]

APPLICATIONS *under §§ 2(a) (7) and 2(a) (8) for orders declaring applicants not to be holding companies and subsidiary companies respectively; denied.*

APPEARANCES: Cantwell & Cantwell, by John M. Cantwell, Jr., and Paul M. Cantwell, for Paul Smith's Electric Light and Power and Railroad Company, Paul Smith's Hotel Company, and Paul Smith's College of Arts and Sciences, intervener; Allen E. Throop, by Frederic P. Glick, for Gas and Electric Associates; Robert N. Hislop, for the Public Utilities Division of the Commission.

By the COMMISSION: This proceeding arises upon a series of appli-

cations involving the status under the Public Utility Holding Company Act of 1935 of Paul Smith's Electric Light and Power and Railroad Company, Paul Smith's Hotel Company, and Gas and Electric Associates. Paul Smith's Electric Light and Power and Railroad Company and Paul Smith's Hotel Company have applied under § 2(a) (8) of the act 15 US CA § 79b, for orders declaring them not to be subsidiaries of the following companies: Associated Gas and Electric Company; Associated Gas and Electric Corporation; Daly & Co.; Associated Utilities Corporation; Gas and Electric Associates; Associated Real Properties, Inc.; Shinn & Company; the Railway and Bus Associates; Denis J. Driscoll and Willard L. Thorp, trustees for the estate of Associated Gas and Electric Corporation; and Walter H. Pollak,[1] trustee for the estate of Associated Gas and Electric Company.

Gas and Electric Associates, an admitted subsidiary of Associated Gas and Electric Company, has applied under 2 (a) (7) of the act for an order declaring it not to be a holding company. Associated Utilities Corporation, another admitted subsidiary of Associated Gas and Electric Company, also filed an application under § 2(a) (7), but during the course of the proceedings its counsel stated that he was prepared to concede that it was a holding company within the meaning of the act because of its ownership of the securities of Keuka Lake Power Corporation, and upon registration the Commission permitted withdrawal of this application (Holding Company Act Release No. 2541, February 6, 1941).[2]

On August 23, 1940, we ordered the hearings on these applications consolidated. We permitted Paul Smith's College of Arts and Sciences to intervene, and after due notice a hearing was held before a trial examiner.[3]

At the conclusion of the hearing counsel for applicants Power Company and Hotel Company and counsel for the Public Utilities Division filed requested findings of fact. On April 4, 1941, the trial examiner submitted his report recommending that the applications be denied. Exceptions to the trial examiner's report and supporting briefs were filed with us, and we heard argument.

The Companies Involved

Applicant Power Company is a hydroelectric utility company, incorporated under the laws of New York, serving an area in the Adirondack mountains in the state of New York. The combined capacity of the company's five hydroelectric plants is 5,500 kilowatts. Its transmission lines extend about 140 miles and its distribution lines about 200 miles. The company's gross revenues approximate $375,000 per annum, and its plant and

[1] Since the filing of these applications, Mr. Pollak has died and has been succeeded by Stanley Clarke; that fact is not, however, material to the relationship between the applicants and the estate of Associated Gas and Electric Company.

[2] See chart on page 211.

[3] In this opinion, we shall refer to various companies as follows:

Paul Smith's Electric Light and Power and Railroad Company	Power Company
Paul Smith's Hotel Company	Hotel Company
Associated Gas and Electric Company	Associated
Gas and Electric Associates	Gas Associates
Paul Smith's College of Arts and Sciences	College

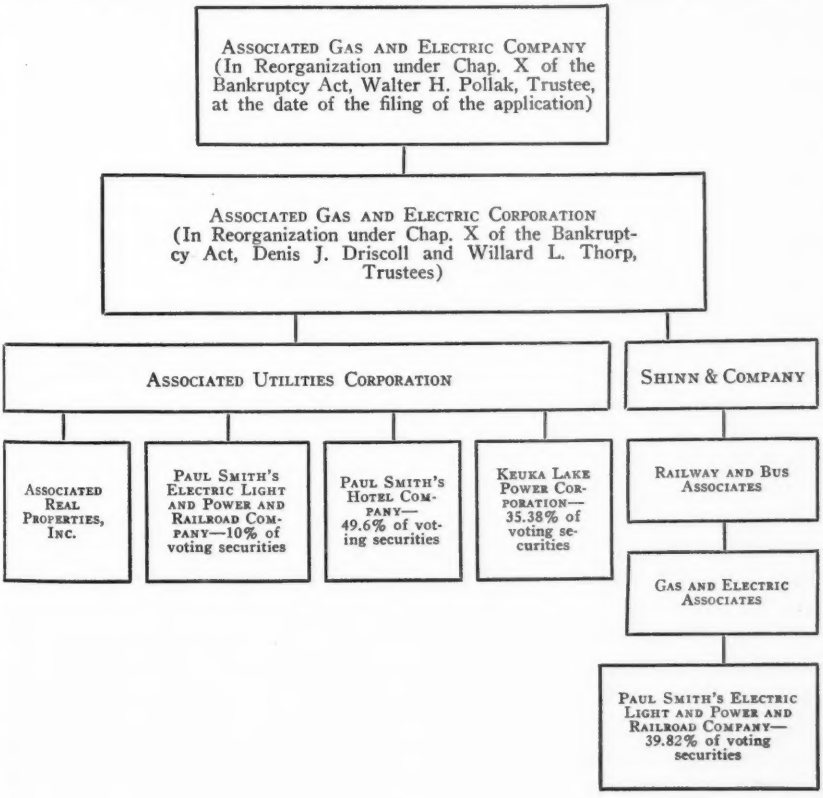
property aggregate approximately $2,250,000. It produces about 75 per cent of its own energy needs, purchasing the balance from interconnecting systems.

Applicant Hotel Company was organized originally to maintain a resort hotel, but the main hotel building was destroyed by fire in 1930. It now owns cottages which are available for public use and considerable timber land. It has paid no dividends since 1925.

Applicant Gas Associates, a Massachusetts trust, is an admitted subsidiary of Associated. According to the testimony of an official in the Associated system, it was created to hold certain securities which Associated did not want held by some other corporation in the Associated system.

Associated Gas and Electric Corporation, Associated Real Properties, Inc., Shinn & Company, and the Railway and Bus Associates are admitted subsidiaries of Associated Gas and Electric Company. (See note 2, *supra.*) Daly & Co. is admittedly a

The following chart indicates the corporate relationship existing in that part of the Associated Gas and Electric Company's system with which the present proceeding is concerned:



nominee for Gas and Electric Associates and Associated Utilities Corporation.

Gas Associates owns 39.82 per cent of the common stock, the only voting securities, of Power Company, and an additional 10 per cent is owned by Associated Utilities Corporation, another admitted subsidiary of Associated. It is conceded that, for the purposes of this proceeding, we may consider the 49.82 per cent of the stock of Power Company owned by the two subsidiaries of Associated as one unit. Associated Utilities Corporation also owns 49.6 per cent of the common stock, the only voting securities, of Hotel Company.

Thus, Power Company and Hotel Company are subsidiary companies of Associated within the meaning of § 2(a) (8) (A) of the act. Each company claims, however, that it meets the test prescribed by the last paragraph of § 2(a) (8) and therefore is entitled to be declared not to be a subsidiary company in the Associated system. It is admitted that neither company is an intermediary company through which control of another company is exercised. Hence, the issues before us are whether Power Company or Hotel Company has shown (a) that it is not controlled, directly or indirectly, by Associated by any means or device whatsoever, and (b) that its management or policies are not subject to a controlling influence, directly or indirectly, by Associated so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties, and liabilities imposed by the act upon subsidiary companies of holding companies.

Since Gas Associates is a subsidiary of Associated through which Associated holds most of its interest in Power Company and since Power Company is the only public utility company in which Gas Associates holds in excess of 10 per cent of voting securities, our determination with respect to whether Power Company is a subsidiary of Associated under § 2 (a) (8) will be decisive of Gas Associate's application under § 2(a) (7).

History of Power Company and Hotel Company

Hotel Company was organized in 1895 by Paul Smith, Sr., for the general purpose of owning and operating a hotel. It acquired considerable holdings of land and several water sites which it partially developed and later transferred to Power Company upon the formation of that company. Power Company was organized in 1905 by Paul Smith, Sr., and his two sons, Phelps and Paul, Jr., each of the three owning one-third of the original capitalization of 1,000 shares. Paul Smith, Sr., died in 1912 and willed his shares in such manner that Phelps owned slightly more, and Paul, Jr., slightly less than 50 per cent of the stock in each of the two companies.

In 1925 John I. Mange, at that time president of Associated, purchased for $1,000,000 the interest of Paul Smith, Jr., in Power Company and Hotel Company.[4] Prior to the sale, although the certificates of incorporation of both companies provided for

[4] That is, 49.82 per cent of the Power Company stock and 49.6 per cent of the Hotel Company stock.

five directors, there were only three—Paul Smith, Jr., who was president; John M. Cantwell, Jr., who was vice president; and Phelps Smith, who was secretary and treasurer—the officers and directors being the same for both companies.[5] In January of 1925, following the sale by Paul Smith, Jr., Phelps Smith gave John Hardin and John M. Cantwell, Jr., each a share of stock in both companies and had them elected as directors. In July of 1925, Phelps Smith was elected president and treasurer; Mange, vice president; and John M. Cantwell, Sr., secretary. At a subsequent meeting the salaries of Phelps Smith and Mange were fixed at $5,000 each. In 1928 the stock purchased by Mange was transferred on the books of the companies to Daly & Co., a nominee of Associated.

Phelps Smith died in 1937, leaving his residuary estate to an educational corporation to be formed under the name of Paul Smith's College of Arts and Sciences.[6] Richard J. Longtin, personal secretary of Phelps Smith and general manager of the two companies, was elected president and treasurer of both companies to succeed Phelps Smith. On probate of the will, the board of trustees of the College received the entire 50.12 per cent interest in Power Company and 50.4 per cent interest in Hotel Company that had been owned by Phelps Smith; and thus the College now owns a bare majority of the stock in each of the companies.

In March of 1938, Mange, while still president of Associated, resigned as vice president of Power Company and of Hotel Company; and, at his request, Peter J. Morrissey was elected to his place. Morrissey is vice president of Gas Associates and is an officer and director of several other Associated subsidiaries. Thus, although the by-laws of Power Company and Hotel Company do not provide for cumulative voting, since the purchase of the Paul Smith, Jr., interest in 1925 Associated has at all times had one of the five directors of each of the companies.

Relationships between the Companies

To support their application, applicants rely strongly on several incidents which occurred soon after Associated acquired its interest. It appears that in 1927 Mange suggested that the stock of Power Company be changed from par value stock to stock without par value and that a large cash dividend be declared. The directors did not accept these suggestions but, instead, voted a stock dividend of $750,000 of $100 par value stock. We note, however, that Mange, at the time he made these suggestions, stated that he had no objection whatsoever to the increase of the capital stock no matter how it was done; and, indeed, he affirmatively expressed his approval by signing the certificate of increase of capital stock.[7] Applicants also point out that Mange asked for two directors but was given only one. The record reveals, however, that Mange did

[5] The directors and officers of the two companies have always been the same.

[6] The college was granted a charter by the Regents of the University of the State of New York on October 15, 1937. The actual operation of the college has not been started as yet.

[7] Since the holders of two-thirds of the voting securities were required to vote in favor of increased capitalization, Mange's disapproval would have prevented the stock dividend.

not insist on having more than one director and that he later expressed approval of the action of the board of directors. Moreover, nothing in the applicants' charters or by-laws required that the interest purchased by Mange be given the representation of even one director.

The record indicates that the entire course of the relationship between the majority and minority interests has been harmonious. We find no evidence of any real conflict between the two interests. Associated appears to have been content to let its wishes be known in the form of suggestions, which for the most part have been followed.

Accounting Services

At present Power Company has a modern accounting system that was established by Associated employees. The first services were performed about 1927, after Mange made several requests for an audit of the two companies and Phelps Smith suggested that Mange send down an auditor. Mange sent James Connell, an employee of H. C. Hopson & Co., a subsidiary of Associated. Connell also made subsequent periodic audits. In 1937, when the New York Public Service Commission required a work order system to be established, Longtin requested Utilities Management Company (Associated's service and supply company) to install the system, and suggested that Connell be used if he were available. Connell established the work order system, and subsequently trained the person who became the chief accountant of Power Company. The total amount paid by Power Company to Associated for these services was somewhat in excess of $8,000.

Rate Studies and the Installation of Continuing Property Records

In 1932, Power Company became involved in a rate dispute with the village of Saranac Lake. Phelps Smith wrote Mange for advice; and upon Mange's suggestion, E. J. Cheney, of the firm of Cheney & Foster (an Associated affiliate), was engaged to make a rate study. Cheney's bill for $3,197.45 for these services was settled for $2,000. In 1936 Cheney was employed to make another rate study and was also engaged to install continuing property records, following the issuance of an order by the New York Public Service Commission requiring such records. No other firms were asked to submit bids, although Lee Mathews & Associates, an unaffiliated firm, had solicited an opportunity to be considered. In fact, Cheney was not asked to submit a price on the whole job, his services being billed from time to time. Power Company paid Associated over $33,000 for these services.

Engineering Services and Modernization of Plant

Power Company today has an improved and modernized plant which is the result of the work of Associated's engineers and construction men. In 1936 Saranac Lake had threatened to install a municipal plant. At Mange's suggestion, H. L. Kneisley of E. M. Gilbert Engineering Corporation, an Associated subsidiary, was employed to examine Power Company's properties and to prepare a plan for the modernization of the system. The cost

of Kneisley's services was over $5,000. Before Kneisley's plan could be carried out, Phelps Smith died. Longtin requested Morrissey to suggest some engineers to install the equipment that had been purchased in accordance with the plan of modernization. Accordingly, Morrissey arranged for skilled workmen from Pennsylvania Edison Company and Pennsylvania Central Light & Power Company, Associated subsidiaries, to install the equipment. These men were retained on the payrolls of their respective companies, and their services were billed by the companies directly to Power Company on the basis of salaries plus expenses. Power Company paid approximately $23,000 to these two companies.

It appears from the record that no services similar to those performed by companies in the Associated system were performed for Power Company by companies not in the system. Applicants have introduced evidence to show that $61,263.85 was spent for the services of engineers outside of the Associated system, while only $36,324.97 was spent for services of engineers within the Associated system. It appears, however, that the greater part of the $61,263.85 was paid to employees on the company's own payroll and to manufacturers from whom equipment was purchased and that a large part of this money was paid for the installation of equipment by such manufacturers.

Purchase of Supplies, Equipment, and Power

The record does not disclose that any purchases of supplies and equipment were made by Power Company from Associated before 1937, when the modernization program was undertaken, or that Associated had suggested before that time that any purchases be made through the Utilities Management Company. Since 1937, about $36,500 of purchases were made from Utilities Management Company, not including about $4,000 of secondhand equipment purchased directly from other subsidiaries of Associated.

Of the electrical energy purchased by Power Company about 95 per cent is purchased from System Properties, Inc., about 4½ per cent from the Oval Wood Dish Company, and only about ½ per cent from New York State Electric & Gas Corporation, the only subsidiary of Associated having a connection with Power Company. The price of the electrical power purchased is the same with respect to all three companies. The record indicates that the principal reason more power was not purchased from New York State Electric & Gas Corporation was that the connection with New York State Electric & Gas Corporation did not furnish satisfactory power.

Legal Services

The legal work of the companies, as a general rule, is performed by the companies' own attorneys who, since the organization of the companies, have been close personal friends of the Smith family. On one occasion, however, in proceedings before both the Public Service Commission and the courts, involving a contract with the village of Tupper Lake, Power Company engaged, at Mange's suggestion, J. A. Kellogg and Frank Irvine. The

cost of such legal services amounted to $3,770.87.

Other Relationships

It is admitted that Longtin, the president of both Power Company and Hotel Company, tends to rely on Morrissey, the Associated representative, when new and novel problems arise. And the record shows that, in fact, whenever any serious problem arose, Phelps Smith, and later Longtin, immediately turned to Associated's representative for guidance. Acting together, Morrissey and Longtin directed the retirement of the chief accountant and general superintendent of Power Company. The present general superintendent is a former employee of Pennsylvania Edison Company, an Associated subsidiary; and the present chief accountant is also a former employee of Associated who was trained by Connell, the Associated employee who made the periodic audit of the companies.

[1] We have previously noted that the fact that a statutory subsidiary continuously chooses to avail itself of the counsel and assistance of its statutory parent is entitled to great weight in determining whether the statutory subsidiary is "subject to a controlling influence" in the language of § 2(a)(8). See Re Hartford Gas Co. (1941) 8 SEC —, Holding Company Act Release No. 2613. "Controlling influence may spring as readily from advice constantly sought as from command arbitrarily imposed." Re Manchester Gas Co. (1940) 7 SEC 57, 62.

Veto Power Held by Associated

[2] Because Associated owns more than one-third of the voting securities of both Power Company and Hotel Company, its affirmative approval is necessary under New York law for the undertaking of such corporate activities as issuing preferred stock, mortgaging property to secure debt, voluntarily selling franchises or property, effecting consolidations and dissolutions, and making various changes in the Certificate of Incorporation.[8] Thus, Associated has a veto power over any of these activities.

The existence of this veto power is a factor to be considered in determining whether there is a controlling influence. See Re Panhandle Eastern Pipe Line Co. (1941) 9 SEC ——, Holding Company Act Release No. 2778, in which we said:

"When other factors indicate the absence of control or controlling influence within the meaning of § 2(a)(7) or 2(a)(8), it may be that the possession of veto power over corporate changes is not exclusively determinative. See Re Allied Chemical & Dye Corp. (1939) 5 SEC 151. This does not mean, however, that we can ignore the cumulative effect of such a veto power when other factors of control exist, as they do in this case."

In Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 738, 39 PUR(NS) 193, *ante*, the court, in discussing the meaning of "controlling influence" as used in § 2(a)(8), said:

"The present act undertakes to bring within its ambit all subsidiaries subject to 'controlling influence' of a parent. This phrase should be construed in the light of the purpose of the act of

[8] See Consol. Laws N. Y. Chap. 24, § 45c; Chap. 60, §§ 16, 19, 20, 35, 37, 86, 105.

which it is a part, and when understood in this setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising restraint or preventing free action. The phrase as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully."

[3] Finally, it is contended that even if we find Power Company is subject to the control or controlling influence of Associated, Hotel Company is not subject to such control or controlling influence because Associated has not performed services for Hotel Company. In view of the fact that the directors and officers of both companies are identical, that the stock ownership of Associated is substantially identical in both companies, and in view of the historically close relationship of the two companies, we think that contention is without merit.

On the basis of the foregoing, we think it is clear that applicants have not demonstrated that Power Company and Hotel Company are not subject to the controlling influence of Associated. Cf. Detroit Edison Co. v. Securities and Exchange Commission, *supra;* Rochester Teleph. Corp. v. United States (1939) 307 US 125, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754; Re H. M. Byllesby & Co. (1940) 6 SEC 639, 32 PUR(NS) 130; Re Manchester Gas Co. (1940) 7 SEC 57; Re Hartford Gas Co. (1941) 8 SEC —, Holding Company Act Release No. 2613.

[4] The question remains whether the applicants have shown that this influence is not such "as to make it necessary or appropriate in the public interest or for the protection of investors or consumers" that applicants Power Company and Hotel Company be subject to the obligations, duties, and liabilities imposed by the act upon subsidiary companies of holding companies.

Counsel for Power Company and Hotel Company contend that their companies are small intrastate companies and that the public interest involved should be weighed against the heavy burdens put upon subsidiary companies by the act. However, since both counsel and witnesses for the applicants state that they will issue no securities, make no loans to or from Associated, or make any material amount of purchases from or through the system, it does not appear that the burdens imposed by the act will be very extensive. Rather, we think, the principal provisions of the statute which will affect the applicants will afford to them affirmative protection against overreaching on the part of the holding companies.[9]

In this connection, we note that the

[9] Sections 1 through 5 place no burdens upon subsidiaries. Since neither applicant contemplates the issuance of securities, §§ 6 and 7 would have no application. And, in any event, § 6(b) would exempt from the provisions of §§ 6 and 7 almost any financing by the applicants where such financing was approved by the state Commission. Since Power Company is an intrastate company and is fully subject to the jurisdiction of the New York State Public Service Commission, § 8 will have no effect.

Under §§ 9 and 10, there is a general requirement that a subsidiary of a registered holding company must obtain the Commission's approval to acquire any securities or

record herein contains evidence of numerous services performed by Associated for substantial cash payments in which there was an absence of arm's length bargaining. But, even in the absence of such a showing, we have held that the standards of 2(a)(8) do not require findings with respect to whether any of the evils enumerated in § 1 of the act exists at the present time; the power to bring about the evils is sufficient. See Re American Gas & E. Co. (1941) 9 SEC —, Holding Company Act Release No. 2749; Re Manchester Gas Co. *supra.*

In discussing this question Judge Hamilton, speaking for the circuit court of appeals for the sixth circuit in Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 739, 39 PUR(NS) 193, 206, *ante,* said:

"Petitioner urges on us that the evidence in the record, when fairly appraised and weighed, shows a lack of necessity or appropriateness in the public interest or for the protection of investors or consumers, that it be subjected to the obligations, duties, and liabilities of the present act. To this contention we cannot agree. The phrase 'public interest' as used means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility. The phrase is not to be construed as requiring the Commission to find that the conduct of the applicant's business has or will affect the public adversely. The statute contemplates action prospectively. It is a preventive measure intended to regulate action before the interests of those concerned are adversely affected."

[5, 6] We do not think that applicants have demonstrated that it is not necessary and appropriate in the public interest and for the protection of investors that applicants be subject to the obligations, duties, and liabilities imposed by the act upon subsidiaries of holding companies.

Accordingly, the applications of Power Company and Hotel Company must be denied (or dismissed),[10] and

utility assets or other interest in any business. This section should offer little burden to the companies here involved, particularly in view of the provisions of § 9(b) which exempt the acquisition of utility assets and certain other acquisitions where such acquisitions have been authorized by the state Commission. Section 11, dealing with integration, would place no burdens upon either Power Company or Hotel Company; and, in view of the past activities of Power Company and Hotel Company and the size and nature of the business of such companies, § 12 will have little or no effect. Section 13, which deals with services rendered to subsidiaries in a holding company system, will be the main section applicable. But § 13 will impose no burden upon Power Company and Hotel Company; rather, it will afford affirmative protection, since the cost of services rendered to Power Company and Hotel Company by the holding company system will be subject to the scrutiny of this Commission. Section 14 does not require any reports from subsidiaries. Since Power Company is already required to conform to an accounting system prescribed by the New York State Public Service Commission, none of the Commission's Rules thus far promulgated under § 15 would apply to it. The only effect of § 17 would be to require certain reports from Associated's member on the boards of Power Company and Hotel Company.

[10] The applications of Power Company and Hotel Company seek orders under § 2(a)(8) declaring applicants not to be subsidiaries of Associated Gas and Electric Company (and the Trustee for the Estate of the Company); Associated Gas and Electric Corporation (and the Trustees for the Estate of the Corporation); Daly & Co.; Associated Utilities Corporation; Gas and Electric Associates; Associated Real Properties, Inc.; Shinn & Company; and the Railway and Bus Associates. The findings we have made are decisive of the applications in so far as they refer to the companies named above which own, control,

the application of Gas and Electric Associates must be denied. An appropriate order will issue.

or hold with power to vote 10 per centum or more of the voting securities of the applicants (or which are holding companies of such companies). Cf. Re Manchester Gas Co. (1940) 7 SEC 57; Re Hartford Gas Co. (1941) 8 SEC —, Holding Company Act Release No. 2613. But there are various companies listed in the applications which fall in neither category and as to which Power Company and/or Hotel Company are not statutory subsidiaries under § 2(a)(8)(A). This is true in respect to Power Company of Associated Real Properties, Inc., and in respect to Hotel Company of Associated Real Properties, Inc., Shinn & Company, the Railway and Bus Associates, and Gas and Electric Associates. See chart at note 2, *supra*. As to these companies, we think the applications have been improperly filed and that portion of the applications must be dismissed.

NORTH DAKOTA SUPREME COURT

Northern States Power Company

v.

Board of Railroad Commissioners et al.

[No. 6665.]

(— ND —, 298 NW 423.)

Return, § 9 — Basis — Fair value.

1. The fair value upon which a utility is entitled to earn a return is the reasonable value of its property used and useful for the service of the public at the time it is being so used, p. 225.

Valuation, § 36 — Variation from original cost.

2. In determining fair value allowance must be made for the increase or decrease in value of the utility's property from its original cost, unless the allowance of the increase will result in a rate which would be unfair to the public, p. 225.

Valuation, § 39 — Measures for rate making — Historical cost — Reconstruction cost.

3. In finding fair value, the weight to be given to evidence of historical cost and reconstruction cost depreciated and other evidence must be determined in the light of the facts of the case under investigation, p. 225.

Valuation, § 32 — Measures for rate making — Historical cost — Predominating weight.

4. A rule or precedent which requires that evidence of historical cost be given predominating weight in every case is arbitrary, p. 225.

Valuation, § 111 — Appreciation in value.

5. Where the undisputed evidence of reproduction cost disclosed a substantial increase in the value of the utility's property over its original cost, it was the duty of the Board of Railroad Commissioners to give consideration and effect to that evidence as a major factor in reaching its finding of fair value, p. 225.

Valuation, § 330 — Going concern value.

6. Going concern value is a property right which should be considered in a valuation of a utility's property for rate-making purposes, p. 229.

Valuation, §§ 336, 337 — Going concern value — Good will — Franchise value.

7. Going concern value as defined in rate cases does not include either good will or franchise values, p. 229.

Valuation, § 330 — Going concern value — Statute.

8. Section 4609c37, Supplement to the Compiled Laws of North Dakota 1913, does not prohibit a consideration and allowance of going concern value in computing a utility's rate base, p. 229.

Valuation, § 333 — Going concern value — History of profitable operation.

9. A utility plant which has a history of continuous profitable operation over a long period of years has a going concern value, p. 229.

Valuation, § 330 — Going concern value — Effect of depreciation computation.

10. The fact that the depreciation of a utility's property was computed upon the basis of its actual physical condition, rather than upon a salvage basis, may not be construed as an allowance of going concern value, p. 229.

Valuation, § 333 — Going concern value — History of profitable operation.

11. Where the evidence showed that a utility had a history of continuous profitable operation, it was the Commission's duty to consider and allow going concern value in determining the fair value of the utility's property, p. 229.

Valuation, § 332 — Going concern value — Finding as to separate allowance.

12. Under the provisions of § 4609c42 Supplement to Compiled Laws of 1913, the Board of Railroad Commissioners is required to make a finding of fact setting forth the amount at which going concern value has been allowed, p. 229.

Expenses, § 2 — Powers of Commission — Opinion as to expenditures.

13. In making allowances for operating costs or expenses, it was the duty of the Board of Railroad Commissioners to allow such amounts as in its judgment were necessary, but the judgment which the Commission must exercise is a judgment based upon the evidence; it may not disregard the undisputed evidence of actual expenditures and substitute therefor its opinion of what the expenditures for any specific purpose ought to be, p. 231.

Expenses, § 63 — Legal expense — Actual disbursements.

14. Where the undisputed evidence disclosed that a utility had expended $8,476.01 for legal services during the year immediately preceding the inquiry and there was no evidence tending to show that such expenditures were wasteful or extraordinary or that such services would cost less in the future, an annual allowance of $3,000 for attorney fees was too great a departure from the unchallenged proof to be accounted for as a reasonable exercise of the Commission's judgment, p. 231.

Expenses, §§ 46, 48 — Dues and donations — Absence of bad faith — Management.

15. Where the evidence showed an itemized list of dues and donations totaling $4,638.94 which the utility had paid out during the year immediately preceding the inquiry, a finding that some but not all of such dues and donations were properly chargeable to operating expenses without specify-

ing which were proper and which were not, and an allowance of $3,000 for all the purposes listed, was, in the absence of any claim of bad faith or that the expenditure for any particular purpose was excessive, an attempt to control the management of the utility and beyond the powers of the Board of Railroad Commissioners, p. 232.

Rates, § 650 — Findings of fact.

16. In its investigation of a utility for the purpose of establishing a rate base the Board of Railroad Commissioners is required to make findings of fact upon all matters which have a bearing upon the rates which a utility will be permitted to charge, p. 232.

Procedure, § 30 — Necessary findings — Review.

17. The findings of fact of the Commission upon all material matters must be sufficiently definite to enable a reviewing court to determine if such findings were supported by any evidence and afforded a reasonable basis for the decision, p. 232.

Expenses, § 9 — Sufficiency of findings of fact.

18. A "lump sum" allowance for operating costs at a figure substantially less than the amount which the utility claimed and offered evidence to prove was necessary, made upon findings which did not disclose the extent to which the utility's specific claims had been allowed, reduced, or rejected, was made upon insufficient findings of fact, p. 232.

(CHRISTIANSON, J., dissents.)

[April 23, 1941. Dissenting opinion May 31, 1941.]

Headnotes by the COURT.

APPEAL *from judgment of District Court vacating orders of Commission reducing electric rates and increasing steam heat rates; judgment affirmed and case remanded with instructions. For Commission decision, see 22 PUR(NS) 364.*

APPEARANCES: Nilles, Oehlert & Nilles, of Fargo, and Hance H. Cleland, of Medford, Or., for respondent; Alvin C. Strutz, Attorney General, and James M. Hanley, Jr., Assistant Attorney General, for appellants.

BURKE, J.: On March 9, 1935, the Board of Railroad Commissioners (hereinafter referred to as the Commission) ordered an investigation of the properties of the Northern States Power Company (hereinafter referred to as the company) which were used and useful in providing electric, gas, and steam heat service at Fargo, West Fargo, and Southwest Fargo, to determine the fair value of those properties for rate-making purposes. The investigation continued for almost three years and the final order of the Commission, establishing a new rate base, was made on February 21, 1938. Separate findings were made for the electric, gas, and steam heat departments. As a result of the investigation the Commission ordered a reduction in the rates of the company's electric department and an increase in the rates of the steam heat department. Immediately upon receipt of the Com-

mission's findings and order, the company petitioned for a reconsideration of the whole case. The petition was denied and the company thereupon appealed to the district court of Cass county from all of the findings, decisions, and orders of the Commission in this investigation. Pending a decision of the appeal the district court by its order stayed and suspended the order and decision of the Commission, except with respect to the new steam heat rates, and required the company to deposit in court the difference in charges between the old rates and the rates fixed by the order under attack. The district court's judgment upon the appeal decreed:

1. That the Commission in determining the rate base as set forth in its findings acted arbitrarily and in violation of law.

2. That the Commission erred in refusing to allow as an addition to its valuation of plant equipment the cost of the new steam electric plant at Fargo in the sum of $557,540.

3. That the Commission acted arbitrarily and in disregard of law in refusing to give consideration and effect to "going concern value" in its valuation of the property of the company.

4. That the finding of the Commission with respect to operating expenses was not sustained by the evidence and that the Commission unlawfully and arbitrarily failed to make sufficient findings from which the court could determine the reasonableness of its allowances for that purpose.

It was further decreed that the Commission's orders in this investigation, dated February 21, 1938, 22 PUR (NS) 364, and March 7, 1938, would result in depriving the company of its property without due process of law, contrary to the Constitution of the United States and the Constitution of the state of North Dakota; that said orders be vacated and set aside and the moneys representing the difference in charges for electric services deposited in court, pursuant to court order, be returned to the company, and that the excess charges collected in the steam heat department be returned to the company's patrons.

A stay of proceedings was granted pending an appeal to this court, and by the terms of this stay the company was required to continue to deposit in court the excess it collected over and above the rates as fixed by the Commission's order of March 7, 1938. The Commission has appealed to this court from the judgment of the district court.

The first point of controversy concerns the method by which the Commission arrived at its determination of "fair value." The statutory procedure is set forth in § 4609c37 of the Supplement to the Compiled Laws of 1913. This section is as follows:

"Valuation of Property; Matters Considered. The Commissioners, for the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political

subdivision of the state or county as a consideration for the grant of such franchise or right by reason of a monopoly or merger. The Commissioners shall prescribe the details of the inventory of the property of each public utility.

"In ascertaining the value of the various kinds and classes of property of each public utility, the Commissioners shall have authority to ascertain and report, in such detail as it may deem necessary, as to each piece of property owned or used by such public utility to show separately the following facts:

"(a) The orginal cost, if any, of each parcel of land owned and used by such public utility and a statement of the conditions of acquisition, whether by direct purchase, by donation, by exercising the power of eminent domain or otherwise.

"(b) The value, as of a date certain, of each parcel of land owned and used by such public utility by comparison with the value of contiguous and neighboring parcels of land and land of similar character as to location and use.

"(c) If there should be any additional value to such utility by reason of the ownership by it of one or more parcels of land, and it is used as a continuous right of way for transportation purposes, or for other purposes, such additional value shall be separately and specifically set forth for each parcel.

"(d) The cost of new production, as of a date certain, of all physical property other than land, owned and used by such public utility showing the valuation of the separate item comprising such property, together with the unit basis of such valuation.

"(e) Depreciation, if any, from the new reproductive cost, as of a date certain, of existing mechanical deterioration, of age, of obsolescence, of lack of utility, or for any other cause, the percentage and amount of each class of depreciation, if any, to be specifically set forth in detail.

'(f) The net value, as of a date certain, of all physical property other than land owned by such public utility, to be derived by deducting the sum of the amounts of depreciation from the sum of the new reproductive costs.

"(g) The value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property. In valuing the property on the basis of the cost to reproduce the same, unit prices of material and labor entering into construction shall be based on the average prices of a sufficient period of years to secure normal results. Equipment shall be valued on the average prices of a sufficient period of years to secure normal results, and there shall be deducted from the total amounts, as thus determined, such sum as is properly chargeable to depreciation under the provisions of subdivision (e), § 37 (this section). The Commissioner shall exclude from such valuation all unearned values or unearned increment.

"Such investigation and report shall also show, whenever the Commissioners may deem necessary, the amounts and dates and rates of interest of all bonds outstanding against each utility, the property on which they are a lien,

the amounts paid therefor and, in such detail as may be necessary the original capital stock and the moneys received by any such utility by reason of any issue of stock, bonds, or other securities; the net and gross receipts of such utility; the method by which moneys were expended and the purpose of such payments. The Commissioners shall have the power to establish rules and regulations to be followed in making such investigation and valuation."

In the course of its investigation the Commission ascertained historical cost, reproduction cost, and reproduction cost depreciated, of the physical property of each of the several departments operated by the company and upon these figures the Commission and the company are in complete agreement. They are as follows:

Historical Cost as of October 1, 1937	
Electric department	$1,663,747
Gas department	1,097,087
Steam heat department	344,958

Reproduction Cost as of October 1, 1937	
Electric department	$1,921,751
Gas department	1,348,353
Steam heat department	422,552

In its findings the Commission did not carry its determination of cost of reproduction less depreciation beyond July 1, 1935. All items of valuation and depreciation necessary to the computation are in the record and are agreed upon by the parties. Making the computation we find reproduction cost less depreciation as of October 1, 1937, to be as follows:

Electric department	$1,597,957
Gas department	1,073,770
Steam heat department	335,152

In its determination of the rate base the Commission first found what it denominated as fair value, saying, 22 PUR(NS) at p. 370:

"On this question of valuation this Commission has consistently followed the Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, decision, requiring the historical cost and cost of reproduction be considered and given due weight, but adhering to the precedent of this Commission, we feel that the historical cost of the property of this utility should be given a greater weight than the cost of reproduction, and in this decision we have weighed them together, giving to each such weight as in our judgment was necessary to arrive at a proper and fair conclusion, considering all of the facts and circumstances disclosed by the evidence, all of which was given due consideration. We find, therefore, based on the evidence adduced, that the fair value of the property is as follows:

Electric department	$1,750,000
Gas department	1,180,000
Steam heat department	350,000"

The "fair values," thus found, were not considered by the Commission as the values upon which the computation of the rates was to be made. These basic values were determined by applying depreciation to fair value in the following manner: Using the agreed per cent condition of the physical property of the company, the Commission computed the accrued per cent depreciation of such property in each of the company's three departments; it then found accrued depreciation in dollars by applying those percentages to the historical cost of the property and the figures thus ascertained were then deducted from the previous findings of fair value for each department.

As a result basic values were found as follows:

Electric department	$1,461,357
Gas department	955,510
Steam heat department	277,729

The basic value determined for the electric department is thus $202,390 less than historical cost and $136,600 less than reproduction cost depreciated; that for the gas department is $141,577 less than historical cost and $118,260 less than reproduction cost depreciated; and that for the gas department is $77,249 less than historical cost and $57,423 less than reproduction cost depreciated.

The Commission asserted, that in making its findings of value it had followed the decision of the Supreme Court of the United States in Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418. In its conclusion that this decision should have been followed, the Commission was correct.

[1–5] Section 4609c37, *supra,* is § 37 of Chap. 192, Laws of 1919. As originally introduced (H. B. 97) in the legislature, this section was taken practically verbatim from the Ohio statute which was enacted in 1913 (§ 499–9 Code of Ohio). Had the statute been enacted as originally introduced, no difficult question of interpretation would have arisen and the measure of value of a utility's property for rate-making purposes would have been established as the reproduction cost of the property of the utility, used and useful for the public service, less actual depreciation. Lima Teleph. & Teleg. Co. v. Public Utilities Commission, 98 Ohio St 110, PUR1919A 888, 120 NE 330 (decided April 30, 1918). However, the proposed statute was amended before final enactment. Subdivisions (a), (b), (c), (d), (e), and (f) were not changed but subdivision (g) was rewritten. As originally written subdivision (g) provided: "If there shall be any additional value given to the value of the property of a public utility . . . due to the possession of a franchise to perform a public service, or for good will or financing, such additional value shall be separately and specifically set forth, together with the basis for the computation or estimate of such additional value."

This language was stricken from the bill and subsection (g) was rewritten as follows: "The value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property. In valuing the property on the basis of the cost to reproduce the same, unit prices of material and labor entering into construction shall be based on the average prices of a sufficient period of years to secure normal results. Equipment shall be valued on the average prices of a sufficient period of years to secure normal results, and there shall be deducted from the total amounts, as thus determined, such sum as is properly chargeable to depreciation under the provisions of subdivision (e), § 37 (this section). The Commissioner shall exclude from such valuation all unearned values or unearned increment."

The situation with which we are confronted then is this: subsections (a) to (f) inclusive provide for valuation upon the basis of reproduction cost new, as of a date certain, less de-

preciation; the first sentence of subsection (g) provides for valuation upon the basis of prudent investment and the balance of subsection (g) which is a part of the same amendment, provides for valuation upon reproduction cost new, not as of a date certain but over a sufficient number of years to secure normal results, less depreciation.

Originally the Board of Railroad Commissioners interpreted the statute to direct a finding of fair value for rate-making purposes upon the basis of prudent investment alone. However, in their decision in the case of the Western Electric Company, decided March 12, 1923, the Commissioners reversed their former holding, saying:

"We agree with counsel for the utility that the tendency of the courts is to hold that the value of the property of a utility must be determined as of the time of the inquiry. *Further consideration of the statute impels us to the belief that the statute does, in fact, contemplate this very thing.*" (Italics ours.) Re Western Electric Co. PUR 1923C 820, 830.

Since the decision in the Western Electric Company Case the Commissioners have consistently followed the rule therein laid down. Re Red River Power Co. PUR1923E 534, decided July 6, 1923; Re Mandan Electric Co. PUR1925D 508, decided March 11, 1925; Railroad Comrs. v. Hughes Electric Co. PUR1925A 18, decided July 30, 1924; Grand Forks v. Red River Power Co. 8 PUR(NS) 225, decided April 10, 1935. The Commissioners' interpretation of the statute received judicial approval in the case of Grand Forks v. Red River Power Co. which was appealed to the district court. In the opinion filed in that case, Judge Grimson said:

"Two systems of valuations of property are pointed out. One is based on the original cost of the property and is variously designated as historical cost, construction cost or prudent investment cost. The other system is the one which attempts to determine the value of the property if it had to be reproduced at the time of the hearing and is generally called reconstruction value. Section 4609c37 of Chap. 192, Session Laws 1919, directs the Commission to take into consideration both of these systems. That law apparently attempted to direct the Commission to take into consideration all the matters prescribed by the rule laid down in Smyth v. Ames, *supra.*" 12 PUR(NS) 353, 359.

Thus for almost twenty years § 4609c37 has been construed by the Board of Railroad Commissioners as a statutory adoption of the rule of valuation laid down by the Federal Courts commencing with the decision in Smyth v. Ames, *supra.* Ten legislative assemblies have met since the Commission's decision in Re Western Electric Co. *supra,* and no amendment has been made of the statute. As was said by Judge Nuessle in State v. Equitable Life Assurance Society (1938) 68 ND 641, 653, 282 NW 411, 416: "This is pertinent in determining the legislative intent. The 'legislature is presumed to know the construction of its statutes by the executive departments of the state.' John Hancock Mut. Life Ins. Co. v. Lookingbill (1934) 218 Iowa, 373, 253 NW 604, 611."

If it can be reasonably contended

that another construction may be placed upon this statute then the statute is of doubtful meaning for no better proof of uncertainty of language can be had than that informed men reasonably and honestly differ as to its meaning. And "in construing a statute of doubtful meaning the court will give weight to the long-continued practical construction placed thereon by the officers charged with the duty of executing and applying the statute" (State v. Equitable Life Assurance Society, *supra*), to the judicial construction of such statute by an inferior court (59 CJ 1036), and to the legislative acquiescence in both the departmental and judicial construction. 59 CJ 1037. Whatever doubts we might have had are removed by these considerations and we therefore hold that § 4609c37, *supra*, adopts the rule of the Federal courts with respect to valuation of utilities for rate-making purposes. Many subsequent decisions of both the Federal and state courts which have followed Smyth v. Ames, *supra*, have explained and defined the rule therein laid down and while perhaps no rule has been subjected to more severe judicial and academic criticism, it is apparent that for the time being at least the principles applicable to a determination of value for rate-making purposes are well settled.

The value which must be ascertained is the reasonable value of the utility's property used and useful for the public service at the time it is being so used. San Diego Land & Town Co. v. National City (1899) 174 US 739, 43 L ed 1154, 19 S Ct 804; San Diego Land & Town Co. v. Jasper (1903) 189 US 439, 47 L ed 892, 23 S Ct 571; Stanislaus County v. San Joaquin & K. River Canal & Irrig. Co. (1904) 192 US 201, 48 L ed 406, 24 S Ct 241; Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807; Bluefield Water Works & Improv. Co. v. West Virginia Public Service Commission, 262 US 679, 67 L ed 1176, PUR1923D 11, 43 S Ct 675. Fair value includes the appreciation in value of the utility's property where the allowance of the appreciation will not produce a rate unjust to the public. Willcox v. Consolidated Gas Co. (1909) 212 US 19, 53 L ed 382, 29 S Ct 192, 48 LRA (NS) 1134, 15 Ann Cas 1034; Minnesota Rate Cases (Simpson v. Shepard) [1913] 230 US 352, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18; McCardle v. Indianapolis Water Co. (1926) 272 US 400, 71 L ed 316, PUR1927A 15, 47 S Ct 144. In the Minnesota Rate Cases, *supra*, the court said [230 US at p. 454]:

"As the company may not be protected in its actual investment, if the value of its property be plainly less, so the making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership, and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law."

Among the factors set forth in Smyth v. Ames, *supra*, as evidence to be considered in the determination of fair value two have assumed a position of predominating importance. They are historical cost and reproduc-

tion cost depreciated. Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra;* Bluefield Water Works & Improv. Co. v. West Virginia Public Service Commission, *supra;* Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715. But as Mr. Justice Butler said in McCardle v. Indianapolis Water Co. *supra* [272 US at p. 410, PUR1927A at p. 23]: "this does not mean that the original cost or the present cost or some figure arbitrarily chosen between these two is to be taken as the measure. The weight to be given to such cost figures and other items or classes of evidence is to be determined in the light of the facts of the case in hand."

In the instant case the Commission, in finding the rate base considered historical cost depreciated as the controlling factor. In doing so, it did not point to any evidence which it claimed justified denying the company the benefit of the appreciation in value of its property which was shown in the finding of reproduction cost, depreciated and we find no such evidence in the record. The Commission does not claim that rates based upon a higher valuation than that which was found would be unfair to the consuming public. In fact the only reason given by the Commission to substantiate its finding of value was that in giving greater weight to historical cost, depreciated, it was "adhering to the precedent of this Commission." It is perfectly clear from what has been said that the establishment of such a precedent is in itself arbitrary. It creates an inflexible formula which denies to the evidence in a particular case its normal probative value. The Commission's adherence to this precedent has had that result in this case. There is no evidence in the record which impeaches reconstruction cost depreciated as a criterion of fair value to the extent that it should be considered as a factor of minor importance. It is true that fair value and reproduction cost depreciated are not synonymous terms but in the light of the principle that fair value must include the increase in value over original cost, the Commission may not, in fixing fair value, disregard evidence of reproduction cost depreciated or refuse to give such evidence weight as one of the major factors in reaching its conclusions. In the absence of the proof of other circumstances which would tend to destroy its force, such evidence obviously has more bearing on the question of present value, than has evidence of original cost, depreciated, and it was the Commission's duty to give due consideration and effect to that evidence.

It is also contended by the company that the Commission's refusal to consider the cost of certain new construction as an element of value was arbitrary and illegal. With respect to this item the order of the Commission is as follows: "The next item of proposed additions, . . . consists of the proposed installation of a new 5,000 kilowatt turbine and other necessary additions at a cost of $610,000. There was no evidence adduced to indicate the certainty of the time of this expenditure." 22 PUR(NS) at p. 368. In view of our disposition of the previous question this case must be returned to the Commission for reconsideration. It is therefore unnec-

essary for us to consider whether or not the Commission's action in this regard was justified by the evidence. If, as the company claims, the addition has been completed and is in use, its value will be allowed by the Commission as a matter of course.

[6–12] In its computation of a rate base, the Commission refused to add to its finding of the fair value of the physical property of the company any additional amount for "going concern value." The company contends that "going concern value" is a very real ascertainable value upon which it is entitled to earn a return and that the Commission's refusal to make such an allowance was contrary to statute and violative of the due process clauses of both the state and Federal Constitutions. Testimony offered on behalf of the company is that the additional value claimed is "the difference in value between two utilities, one of which has a list of customers, an established business and is in profitable operation and one which has a plant assembled but without an established business." As concrete evidence of the difference between its own condition and that of a plant fully constructed but not in operation, the company offered evidence to show the steady growth of its business and the communities served, its good credit standing, its excellent record in paying its bond interest and preferred stock dividends, its good public relations; that it had a well-trained, competent, and loyal staff of employees; and that it had a splendid set of records. Upon this appeal the Commission contends:

(1) That § 4609c37, *supra,* in its provision that the Commission "shall exclude from such valuation all unearned values or unearned increment," prohibits an allowance of going concern value,

(2) That the evidence offered by the company is insufficient to establish a going concern value, and

(3) That it gave due consideration and allowance to going concern value.

Before considering the contention of the Commission it is necessary to set forth certain fundamental principles with respect to going concern value as a factor in valuation for rate-making purposes under the Smyth v. Ames rule. The term going concern value in the sense in which it is generally used includes both good will and franchise values, but both of these elements must be excluded from the concept, in computing value for rate-making purposes. Cedar Rapids Gas Light Co. v. Cedar Rapids (1912) 223 US 655, 56 L ed 594, 32 S Ct 389; Id. (1909) 144 Iowa, 426, 120 NW 966, 48 LRA(NS) 1025, 138 Am St Rep 299; Des Moines Gas Co. v. Des Moines, 238 US 153, 59 L ed 1244, PUR1915D 577, 35 S Ct 811. The value which remains after these elements have been extracted, difficult though it may be to define and ascertain, is nevertheless " 'a property right' which should be considered 'in determining the value of the property, upon which the owner has a right to make a fair return.' " Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 77 L ed 1180, PUR1933C 229, 53 S Ct 637, 647; Des Moines Gas Co. v. Des Moines, *supra;* Denver v. Denver Union Water Co. 246 US 178, 62 L ed 649, PUR1918C 640, 38 S Ct 278; McCardle v. Indianapolis Water Co. *supra.* In Los Angeles Gas & E. Corp.

v. California R. Commission, *supra,* 289 US at p. 314, PUR1933C at p. 246, Chief Justice Hughes said: "The principle as thus recognized and limited is obviously difficult of application. . . . It does not give license to mere speculation; it calls for consideration of the history and circumstances of the particular enterprise, and attempts at precise definition have been avoided."

Section 4609c37, *supra,* was enacted subsequently to the decisions of the Supreme Court of the United States in the Cedar Rapids and Des Moines Cases, *supra,* and it is reasonably subject to the construction that it was the legislative intention to prohibit consideration and allowance by the Commission of any elements of intangible value which those decisions had held were not property values which, in a rate case, were protected by the due process clause of the Fourteenth Amendment. The construction contended for by the Commission which would entirely exclude going concern value from consideration in a rate case would, upon the authorities above cited, render the statute of doubtful constitutionality. Following the well established principle of construction that where a statute is reasonably subject to two constructions one of which is clearly constitutional and the other of which is of doubtful constitutionality the former will be adopted. (Wood v. Byrne [1930] 60 ND 1, 232 NW 303; Royal v. Aubol [1939] 69 ND 419, 287 NW 603), we hold that § 4609c37, *supra,* does not prohibit an allowance of going concern value in valuations for rate-making purposes.

The Commission also contends that the investigation disclosed no evidence which would justify the allowance of going concern value as a component part of the rate base. We do not agree. By definition, a utility as an integrated unit with a history of profitable operation has a going concern value. And where the Commission had before it the entire history of the company showing successful operation over a long period of years it was his duty to consider, determine and give effect to this element of value in establishing the rate base. Los Angeles Gas & E. Corp. v. California R. Commission, *supra;* Des Moines Gas Co. v. Des Moines, *supra;* Denver v. Denver Union Water Co. *supra;* McCardle v. Indianapolis Water Co., *supra.*

But, the Commission says, it did give consideration and allowance to going concern value. In its findings the Commission asserted that when the property of the company "was appraised by our engineers and those of the company, the fact that this property was in use and profitable was necessarily considered by them, otherwise certain items would have been valued at much less and the property would have been depreciated to a greater extent, so that indirectly the so-called going concern value was given the consideration to which it was entitled." (22 PUR(NS) at p. 369.) Neither the findings nor the conclusion are supported by the evidence. The engineers' computations of historical cost and reproduction cost were based upon material and labor costs and certain well established overheads for engineering and other construction expense. Depreciation was computed solely upon the basis of the present

physical condition of the property as compared to its original condition. It is true that the engineers did not value the property upon a junk or salvage basis as they would have, had they been asked to value an abandoned plant, but this fact cannot be construed as an allowance of going concern value. Going concern value, is not the difference in the value of an abandoned plant and one that is in operation. It is that added value which the plant in profitable operation has over an identical plant which is fully completed and which presently and certainly is to begin operation. Des Moines Gas Co. v. Des Moines, *supra;* Denver v. Denver Union Water Co. *supra.* Since by the provisions of § 4609c42 Supplement to the Compiled Laws of 1913, the Commission "shall make and file their findings of fact in writing upon all matters . . . which have a bearing on the value of the property of the public utility," a separate finding must be made showing the amount at which the going concern value of the utility has been allowed.

The company's contentions with respect to the Commission's allowance for expenses remain to be considered. In making this allowance the Commission mentioned specifically only three of the company's claims and the company urges that its action upon all three was in disregard of the evidence and arbitrary. The first item was the company's claim of $12,229.60 for regulatory Commission expense. The Commission disposed of this claim by stating that it was "nonrecurring item of expense and as such will not be considered in projecting expenses." The item represents the cost to the company of the present investigation. Upon this appeal the Commission does not contend that the cost of this investigation should not be projected as an expense item. As stated in the brief, the Commission's position is that the item is nonrecurring as an annual cost and that therefore it should not have been allowed in its full amount as an item of annual expense but should have been apportioned over a period of years. This the Commission claims it did, asserting that it allowed for this purpose $2,500 a year. We think it would have been proper for the Commission to have allowed the investigation cost in this manner but we do not think the Commission's findings sustain its contention that it did so. However new findings made upon a further consideration of this investigation will no doubt clarify the Commission's action.

[13, 14] Next is the item for attorney fees. As to this the Commission said, "No evidence was introduced to justify the entire amount of legal expense amounting to $8,476.01. In our judgment we feel that the sum of $3,000 should be sufficient. . . ." (22 PUR(NS) at p. 372.) The testimony of the Commission's witness, Hartl, showed in detail the amount spent by the company for legal services for the year immediately preceding the date of the hearing in this investigation. There is no question but that the company, during that year spent for legal services the amount it claimed should be allowed annually for legal expense. Of the total amount expended, approximately $5,000 was for regular annual retainer fees. There is no testimony in the record which challenges the prudence or the

good faith of the company's management in the incurring of these charges, nor is there any evidence which indicates that the cost of legal services will be a less sum in the future. It was the duty of the Commission to allow an amount which in its judgment was sufficient for the purpose. In the exercise of that judgment, however, it could not disregard the evidence and substitute for its judgment of the evidence its judgment of what the company ought to be able to do. The Commission "'is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officers.'" State P. U. C. ex rel. Springfield v. Springfield Gas & E. Co. (1919) 291 Ill 209, PUR1920C 640, 663, 125 NE 891, quoted with approval in Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807. The Commission could not have allowed this item at $3,000 unless it did ignore the evidence of the company's actual expenditures. The variance between the unchallenged proof and the finding is too great to be accounted for as a reasonable exercise of the Commission's judgment.

[15] The third specific allowance for expense, challenged, is the allowance for dues and donations. The evidence showed that during the year preceeding the hearing, the company had spent $4,638.94 for these purposes. As to these expenditures the Commission stated, "some, but not all, of those items are properly chargeable to operating expenses." (22 PUR(NS) at p. 372.)

It did not point out which items it considered improper and concluded by saying "we have allowed as proper charges to operating expenses a total sum of $3,000 for dues and donations for the purposes listed on page 26 of the exhibit mentioned." The exhibit mentioned is the Commission's Exhibit "7." The purposes listed on page 26 include all the purposes for which the company expended $4,638.94. The inconsistency is patent. The finding is that donations for some unstated purposes are not properly allowable as expenses and the allowance is for a reduced sum for all purposes including the unstated improper ones. If the Commission had concluded that some of the donations were improper, it should have pointed them out specifically and if it thought that some of the contributions were so large as to constitute an abuse of discretion on the part of the company's officers, it should have said so. The action which the Commission did take is simply an attempt to control the discretion of the company's management. This was in excess of the powers of the Commission. State P. U. C. ex rel. Springfield v. Springfield Gas & E. Co. *supra;* Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra.*

[16–18] In its consideration of a general allowance for expenses the Commission stated, "A study of past operations substantiated by the testimony would indicate that an additional 1,400,000 kilowatt hours will have to be generated within the period. Al-

lowance will be made for expenses incident to this additional generation. The company must further provide for a substantial increase in labor costs during the coming year. Allowance is made for such additional expense. Fuel costs have been computed after taking into full consideration increased consumption, additional handling charges, and comparative costs. As a result of this order income taxes and electric franchise tax will be reduced from the amount estimated in Exhibit 'D' but the entire amount of tax expense will be substantially greater during the next year. . . ." (22 PUR (NS) at p. 371.) This statement was followed by the discussion of regulatory expense, attorney's fees and dues, and donations which we have already considered and then the Commission concluded by saying, "After making the above adjustments, we find that the proper operating expenses for each department will be as follows: electric $465,451, gas $193,724, and steam heat $115,093." (p. 372.) Later, in its order denying the company's petition for reconsideration, the Commission increased the allowance for the electric department to $470,005.86.

The company contends that the allowance for the electric department is $28,000 less than the amount which the evidence demonstrates is clearly required. It also asserts that the Commission has not made sufficient findings upon which to base its allowance and that the failure to make specific findings of fact renders the Commission's procedure arbitrary and illegal.

The company had claimed for additional expenses over and above the cost of operation for the preceding year the following amounts, increased cost of fuel $22,000, increased labor costs $11,600, increased taxes $17,400. In its findings the Commission referred to these items and stated that some allowance had been made for these increased costs, but it is impossible to tell from the findings the extent to which any single item was allowed or disallowed.

In so far as the record shows, these items may have been allowed in the full amounts claimed and the reduction accomplished by rejecting items in the previous year's statement of operating costs, or some may have been allowed in full and others in a merely nominal sum. The state of the record is such that it is impossible for us to review the ultimate conclusion of the Commission. We cannot say whether the facts upon which it is founded are supported by any evidence or whether it is one which may reasonably be drawn from the facts.

Section 4609c42 is as follows: "Hearing; Right to; Evidence on; Findings; Review of. The public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The Commissioners are empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the Commissioners. The Commissioners shall make and file their findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which, in its judgment, have a bearing on the value of the property of the public utility. Such findings shall be subject to review by the supreme court of this state in the

same manner and within the same time as other orders and decisions of the Commissioners."

Specifically this section requires findings only upon those matters which have a bearing upon value. The end of the investigation however is not to establish a value but a rate and it is essential that findings be made upon all matters which have a bearing upon the amount of the rates which the company will be permitted to charge. Beaumont, S. L. & W. R. Co. v. United States (1930) 282 US 74, 75 L ed 221, 51 S Ct 1. The findings must be sufficiently definite to be reviewed upon appeal otherwise the right of appeal would be valueless. Chicago R. Co. v. Commerce Commission ex rel. Chicago Motor Coach Co. (1929) 336 Ill 51, PUR1930A 385, 167 NE 840, 67 ALR 938; Chicago Dist. Pipeline Co. v. Commerce Commission (1935) 361 Ill 296, 16 PUR(NS) 312, 197 NE 873; Beaumont, S. L. & W. R. Co. v. United States, *supra;* Wichita R. & Light Co. v. Kansas Pub. Utilities Commission (1922) 260 US 48, 67 L ed 124, PUR1923B 300, 43 S Ct 51.

In the brief submitted by the Commission there appears a tabulation of specific items of expense, showing the amounts at which it is claimed such items were allowed. This tabulation is not sustained by the record and we therefore cannot consider it.

In this investigation there has been practically no dispute as to any material fact. The differences between the Commission and the company arose chiefly upon the manner in which the Commission weighed the facts and upon the conclusions based upon such facts. In disposing of the issues raised upon this appeal we have not held that the patrons of the company were not entitled to a reduction in electric rates, nor that the company was not entitled to an increase in the steam heat rates. It may well be that after a reconsideration of the facts, in the light of this opinion it will be found that the patrons of the company are entitled to a substantial reduction in electric rates. If that result be reached, then in justice, the consumers were entitled to the reduction as of the date of the Commission's original order.

The case is therefore remanded to the district court with instructions to return the case to the Commission in order to give it an opportunity to reconsider the evidence and to amend its findings and order herein in the light of the rules laid down in this opinion. Such reconsideration shall be had on notice to the company and additional evidence may be offered by either party. During the pendency of such reconsideration, the district court shall retain jurisdiction of the case and the order requiring the company to deposit with the clerk of court the excess rates it collects shall remain in force. If the Commission shall amend its order to establish rates, in conformity with this decision, such rates shall be effective as of the date of the first billing subsequent to March 11, 1938, the effective date fixed in the Commission's order of March 7, 1938. Upon the filing of such amended order in the district court, subject to the company's right to further review, the moneys impounded by the clerk thereof pursuant to the previous orders herein shall be disbursed by direction of the court to the persons who shall be entitled thereto.

The Commission shall have sixty days after the remittitur to the district court, and such additional time as may be allowed by said court for good cause, in which to file its amended order. The failure by the Commission to file such order within the time fixed shall be deemed an election not to reconsider the case and in that event the judgment of the district court shall be affirmed.

Burr, C. J., and Nuessle and Morris, JJ., concur.

CHRISTIANSON, J., dissenting: I am unable to agree with the construction that is placed upon § 4609c37 of the 1925 Supplement, in the opinion prepared by Judge Burke. Particularly do I disagree with the construction placed upon the first paragraph of subdivision (g) of said section. This section was part of a comprehensive public utility act enacted by the legislature in 1919. Laws 1919, Chap. 192, § 37. The first paragraph of said subdivision (g) did not appear in the bill as introduced, but was added by amendment. In the bill as introduced, that paragraph read as follows: "(g) If there should be any additional value given to the value of the property of a public utility or railroad due to the possession of a franchise to perform a public service, or for good will or for financing, such additional value shall be separately and specifically set forth, together with the basis for the computation or estimate of such additional value."

After the second reading of the bill it was referred to the Committee of Labor in the House of Representatives (House Journal 1919, p. 200), and that committee reported the bill back (House Journal 1919, pp. 325–327), with the recommendation, among others, that the above-quoted first paragraph of said subdivision (g) be stricken out and the following (the present paragraph) inserted in lieu thereof:

"(g) The value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property. In valuing the property on the basis of the cost to reproduce the same, unit prices of material and labor entering into construction shall be based on the average prices of a sufficient period of years to secure normal results. Equipment shall be valued on the average prices of a sufficient period of years to secure normal results, and there shall be deducted from the total amounts, as thus determined, such sum as is properly chargeable to depreciation under the provisions of subdivision (e), § 37. The Commissioners shall exclude from such valuation all unearned values or unearned increment."

The recommendations of the committee were approved, and the bill as amended was passed by the House of Representatives. House Journal 1919, pp. 327, 384.

The Senate proposed no amendments to said subdivision (g) of § 37 of the bill. The Senate, however, proposed certain amendments to the provisions relating to procedure on appeal from orders of the Commissioners; and, also, adopted an amendment to § 4 of the bill, striking out an amendment of said section adopted by the

House, and inserting in lieu thereof the following provision:

"Provided, that when any public utility corporation, company, or person operating said public utility shall in any proceeding before the Commission, ask to have its rates raised, above the maximum rate contained in its charter, such public utility shall furnish the Commission, the original cost of all its property, the date of the acquisition of said property, the amount of money invested in said property, the amount of stock outstanding, the amount of bonds outstanding against said property, blueprints showing the location and position of all mains, pole lines, wires, and all other property belonging to the company, and shall furnish the Commission with all books, papers, and memoranda of the company showing the financial condition of said utility and shall furnish the Commission with the number of persons, in its employ, the salary paid such employees, its total monthly salaries and wage expense for such time as the Commission may request. Also an itemized statement of its expenditures and the details of its profit and loss account and any and all other books, papers, vouchers, accounts which the said Board of Railroad Commissioners shall ask to have produced as evidence at such hearing." Senate Journal, 1919, pp. 484, 486; House Journal, 1919, pp. 621–623.

The House concurred in the Senate amendments, and the bill was enacted and became law.

The majority opinion holds that the declaration in the first paragraph of said subdivision (g) of § 37 of the Public Utilities Act to the effect that "the value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property" is inconsistent with other provisions of the act and that consequently the legislature did not intend that the Commissioners, upon ascertainment of the amount of money honestly and prudently invested in the property of a public utility company, should accept this as the measure of present fair value of such property; and, also, that the legislature did not intend that the Commissioners, in ascertaining and determining the value of the property of a public utility should give any greater weight to "the money honestly and prudently invested" in such property than to evidence as to the cost of reproduction of such property. The majority opinion also holds that under the Public Utilities Act "a utility plant which has a history of continuous profitable operation over a long period of years has a going concern value"; and "where the evidence shows that a utility had a history of continuous profitable operation, it was the Commission's duty to consider and allow going concern value in determining the fair value of the utility's property"; and, also that it is the duty of the Commission to make a separate finding "setting forth the amount at which going concern value has been allowed."

I disagree with such construction of the statute. The language in the first paragraph of subdivision (g), *supra,* is plain and unambiguous. It in no manner conflicts with any other provision of the act of which it is a part. It is the only provision that

purports to fix the standard or measure of value of the property to be valued. The other subdivisions of said § 37 relate to and provide for the ascertainment of certain facts that the Commissioners may consider in ascertaining and determining the value of the property according to the standard prescribed by the first paragraph of said subdivision (g), but they do not prescribe a standard or measure of value. This paragraph was formulated by the legislative committee to which the bill had been referred for consideration and was embodied in the bill pursuant to the recommendations of such committee, after such recommendations had been considered and discussed by the members of the House in which the bill had originated. House Journal 1919, p. 385. Hence, this paragraph was called specifically to the attention of the legislature, and was the last expression of the legislative will in so far as concerns the section of which it forms a part. The Senate approved this provision and adopted it without change. The amendment which the Senate proposed and adopted to § 4 of the bill is not contrary to, but is in harmony with, the provisions of the first paragraph of subdivision (g). In the amendment which the Senate adopted to § 4, there is no requirement that a public utility that seeks to have its rates raised above the maximum contained in its charter shall furnish proof of cost of reproduction of the property. The information which the utility is required to furnish is material in determining the amount of prudent and honest investment and operating expenses.

Why did the legislature amend the first paragraph of said subdivision (g)? What object did the lawmakers who proposed and who adopted this paragraph have in mind? Certainly the former paragraph was not stricken out and the present paragraph inserted as a matter of pastime, or to increase the number of words in the statute. The language indicates that the lawmakers had a very definite object in mind. In very plain and specific language they said: "The value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property."

There is no uncertainty or ambiguity in this language. Few statutory provisions are more clear and specific.

The object of all interpretation and construction of statutes is to ascertain and carry out the intention of the lawmakers. 26 Am & Eng Enc Law (2d Ed) p. 597. And "the primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." United States v. Goldenberg (1897) 168 US 95, 102, 103, 42 L ed 394, 398, 18 S Ct 3, 4.

"The legislature must be understood to mean what it has plainly expressed, and this excludes construction. . . . Even when a court is convinced that the legislature really meant and intended something not expressed by the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of language which is free from ambiguity. . . . 'There is no safer or better settled canon of interpretation than that when language is clear and unambiguous it must be

held to mean what it plainly expresses.' " 2 Lewis' Sutherland, Stat. Const. (2d Ed) 701, 702. 25 RCL 961–963; 59 C J 953 et seq.

Courts have no legislative powers, and they may not reject a statutory provision in plain and unambiguous language because it seems unnecessary, or unwise, or requires the performance of acts that appear to the court to be useless. American R. Co. v. Birch (1912) 224 US 547, 56 L ed 879, 32 S Ct 603; United States v. Plowman (1910) 216 US 372, 54 L ed 523, 30 S Ct 299; State ex rel. Linde v. Taylor (1916) 33 ND 76, 156 NW 561, LRA1918B 156, Ann Cas 1918A 583.

It is a cardinal rule of statutory construction that effect must be given, if possible, to the whole statute and to every part thereof. "Conflicting intentions in one and the same act of legislature are not to be supposed and never so regarded, unless forced on courts by unambiguous language." Marengo County v. Wilcox County (1927) 215 Ala 640, 112 So 243. It is only when there is such irreconcilable conflict between the provisions of the statute that they cannot both or all stand that the court is required to determine which of the conflicting provisions is expressive of the legislative will. It is not enough that there is a discrepancy, or that some of the acts enjoined or authorized by the statute may seem to be useless, or even harmful (Greenleaf v. Minneapolis, St. P. & S. Ste. M. R. Co. [1915] 30 ND 112, 119, 151 NW 879, 882, Ann Cas 1917D 908; American R. Co. v. Birch, *supra;* United States v. Plowman, *supra,* 216 US at p. 375, "courts still would be bound by the explicit and unmistakable words" of a statutory provision, unless there is an irreconcilable conflict between that provision and other provisions of the same or other statutes. In case of such conflict, the provision last in point of time or order of arrangement is ordinarily deemed to be expressive of the legislative will. 11 Ency US Supreme Court Reports, p. 130; 1 Lewis' Sutherland, Stat. Const. (2d Ed) p. 540, § 280; 26 Am & Eng Ency Law, p. 734; 36 Cyc 1130; Note, 6 Ann Cas 860, 861. When one provision of a statute treats specially and solely of a matter, that provision will prevail in reference to that matter over other provisions which either incidentally or impliedly refer thereto, "not because one section has more force as a legislative enactment than another, but because the legislative mind, having been in the one section directed to this matter, must be presumed to have there expressed its intention thereon rather than in other sections, where its attention was turned to other things." Long v. Culp (1875) 14 Kan 412, 415.

The first paragraph in subdivision (g), § 37, Chap. 192, Laws 1919, was the last expression of the lawmakers upon the subject to which it relates. The lawmakers determined that the bill as introduced did not express their intent, and so they amended it and inserted a new provision to express such intent. The provision so inserted covered a matter not covered by any other provision in the bill. When the bill became law it was the only provision which purported to state in terms the basic standard the Commissioners shall apply in determining the value of the property of a public utility. If any

conflict exists between the provision that was added by amendment and the provisions in the bill as introduced, the amendment should be deemed expressive of the legislative will. In this case, however, there is no irreconcilable conflict between the first paragraph of said subdivision (g) and other provisions of the act. Indeed, there is no conflict at all. The first paragraph of subdivision (g) of said section is the only provision in the entire statute that purports to state the basic value to be ascertained and determined by the Commissioners.

Chapter 192, Laws 1919, was the first comprehensive public utilities act adopted in this state. That there existed a real need for such a law was generally recognized and was freely expressed by the lawmakers. House Journal, 1919, p. 385. It is a matter of common knowledge that in 1919, and for a number of years prior thereto, regulation of public utilities had been a subject of public interest and concern. Public Utilities Acts had been enacted in a number of states prior to 1919. Massachusetts was the first state to exercise control over all public utilities. See Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 310, 67 L ed 981, 994, PUR1923C 193, 31 ALR 807. Under the law of Massachusetts, as interpreted and applied in 1919 and for some years prior thereto, "capital honestly and prudently invested" was "the controlling factor in fixing the basis for computing fair and reasonable rates." Re Bay State Rate Case, PUR1916F 221, 233; Re Middlesex & Boston Case (1914) 2 Mass PSCR pp. 111, 112.

In the Middlesex & Boston Case, *supra*, at pp. 111, 112 (decided in 1914), it was said: "Accordingly, we rule that under Massachusetts law capital honestly and prudently invested must, under normal conditions, be taken as the controlling factor in fixing the basis for computing fair and reasonable rates; that if there is mismanagement causing loss, such loss must be charged against the stockholders legally responsible for the mismanagement; that reproduction cost either with or without depreciation, while it may be considered, is not under our law, to be taken as the determining basis for reckoning rates."

In Re Bay State Rate Case (decided August 31, 1916), PUR1916F at p. 233, the rule laid down in the Middlesex & Boston Case was re-affirmed.

Wisconsin had provided for regulation of public utilities through a state Commission many years before the public utility law was enacted in this state. In discussing the practice under the Wisconsin law, the supreme court of that state in its decision in Waukesha Gas & E. Co. v. Railroad Commission, decided July, 1923, 181 Wis 281, 300, 301, PUR1923E 634, 194 NW 846, 854, said:

"For fifteen years this statute has been administered upon the theory that the investor was entitled to a reasonable return on a valuation that fairly represents the legitimate and necessary cost of constructing the plant and building up its business. . . . Both the Commission and the court in Wisconsin have adhered with reasonable fidelity to what is now termed the prudent investment theory. . . .

"In determining the present fair value of a public utility operating under our public utility law, it is our

view that justice as well as sound economic practice requires that controlling weight should be given in the valuation of the plant of a public utility to the investment cost where the investment has been prudently made."

In its decision in Milwaukee Electric R. & Light Co. v. Milwaukee, PUR 1918E 1 (decided June 1918), the Wisconsin Commission said:

"Fair value may be expressed as the amount which has been prudently and economically invested in the property. This would seem to represent fair dealing, on the one side, as to the public, and a fair measure of the sacrifice of those who have invested their money in the utility.

"On the whole, it would seem that there could be no more equitable standard of fair value as between the utility and the consumer, than that of investment reasonably and prudently made. . . . Under ideal conditions, capitalization might well be the measure of it. But ideal conditions do not always exist. The company may not have exercised proper foresight or business acumen in the erection of the plant, or the installation of equipment. Through failure to charge off renewals the plant account may be inflated. The amount expended to bring about a consolidation or acquisition of additional property may have borne no relation to the amount legitimately expended to construct the original properties consolidated or acquired. Even if the original cost of the property is ascertainable, it may not be the reasonable measure of the investment. . . .

"In many cases books showing the early history of the enterprise may be entirely lacking. In the case of most larger companies, consolidations have taken place, and original cost can only be estimated at best, or again, if books of account are available, they may not be kept in such manner as to throw much light upon questions of early history, essential to be ascertained in order to get at a fair original cost at the early period of development. . . .

"If the amount honestly and prudently invested in the enterprise could always be ascertained, it would, in our judgment, be a very important element to be considered in establishing fair value, as representing both the measure of sacrifice by the owners of the utility and that amount upon which the public should be asked to pay reasonable returns. The difficulty, however, relates rather to the ascertainment of the facts, than to the matter of definition. It is largely because of the difficulty in ascertaining such an amount that reproduction cost is in so many cases resorted to and given a preponderating influence. We are of the opinion that reproduction cost is useful in proportion as it tends to throw light upon investment, rather than as being in and of itself the measure of exchange value.

"Reproduction cost, both new and less depreciation, is also valuable in other ways. The reproduction estimate is helpful in determining the amount of nonoperating property as distinct from the operating property, and assists in the allocation of a large property between different utilities served by the same organization. . . . Reproduction cost less depreciation tends to throw considerable light on the question of treatment of maintenance and renewals, and is especially important in connection with estab-

lishing a proper depreciation reserve and fixing a proper amount to be annually credited to that reserve. It also throws light on the question of whether depreciation has been allowed to take place at the expense of service. If the company has neglected upkeep or failed to maintain proper reserves, the earnings in the meanwhile being sufficient for that purpose but being in fact returned to the stockholders in the form of dividends, this fact should be ascertained. . . .

"As reproduction cost new is not necessarily to be taken as representing fair value, it seems equally clear that reproduction cost new less depreciation cannot be so taken. What is to be ascertained is the amount fairly representing the prudent and honest investment made by the owners of the utility. They are entitled to have that contribution kept intact until returned to them." PUR1918E pp. 23–26.

During the years immediately preceding the enactment of the Public Utilities Act in this state, Utility Commissions in other states and eminent legal writers in ever-increasing numbers had approved the amount of prudent and honest investment as the measure of value in computing just and reasonable rates. Edwin C. Goddard, "Public Utility Valuation," 15 Mich L Rev 205, at 226; Robert H. Whitten, "Fair Value for Rate Purposes," 27 Harvard L. Rev 419; 1 Whitten, Valuation of Public Service Corporations (2d Ed) pp. 542–547, 575, 586, 591. Prior to the enactment of the Public Utilities Act in 1919, there had been no control by the state of the accounting of the various public utilities that were brought under the regulatory powers of the Commissioners by that act, and the experiences of other states as well as of the Interstate Commerce Commission had demonstrated that in many, if not most, instances it would be impossible to ascertain the actual or original cost of public utility property from the records of the utility. The experiences in other states had demonstrated that "it was impossible to ascertain with accuracy, in respect to most of the utilities, in most of the states in which rate controversies arose, what it cost in money to establish the utility; or what the money cost with which the utility was established; or what income had been earned by it; or how the income had been expended." Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 309, 67 L ed 981, 994, PUR1923C 193, 216, 43 S Ct 544, 553, 31 ALR 807. The Interstate Commerce Commission in its decision in the Texas Midland Railroad Case, 75 Inters Com Rep 1, 8, decided July 31, 1918, had called attention to the difficulty encountered by it in endeavoring to comply with the requirements of the Railroad Valuation Act that the Commission should report "original cost to date." In its decision in that case, the Commission said that its experience indicated that in "most cases it will be impossible to report original cost to date from accounting records alone."

The lawmakers who enacted the Public Utilities Act of this state in 1919 had the benefit of the experiences of the Interstate Commerce Commission and of the Utility Commissions in other states which had been required to ascertain and determine the value of public utility properties for rate-

making purposes. They also had the benefit of the experiences of the Board of Railroad Commissioners in this state under Chapter 208, Laws 1915. That law provided that whenever the city council or commission of any city, or the governing body of any town or village should adopt a resolution "complaining that the rate charged within the municipality by any person, firm, or corporation furnishing either water, gas, or electricity for light, heat, or power to said municipality or to the inhabitants thereof is excessive," the Board of Railroad Commissioners shall fix a time for a hearing on such complaint and upon the completion of such hearing shall make findings of fact and on such findings "shall make an order fixing and establishing a just and reasonable rate as a maximum to be charged for the ensuing five years for the commodity the rate for which is then under investigation." A proceeding had been instituted under this statute involving the properties of the Northern States Power Company in the state of North Dakota, including the properties furnishing electricity, artificial gas and steam heat to the citizens of Fargo. That proceeding was pending when the Public Utilities Act of 1919 was prepared, introduced and adopted, and, by agreement of the parties, the hearing was continued and conducted under the Public Utilities Act of 1919. Fargo v. Union Light, Heat & P. Co. (1919) PUR1920A 764, 768. According to the decision in that case, the utility properties in Fargo were purchased by the Northern States Power Company on April 1st, 1910, and it appears that although the utility company had been requested to furnish the Commission with a statement of values representing the original costs of each of its properties, the utility was unable to furnish any reliable statement because the records showing the original cost had been lost. It was pointed out in the decision that this was not an exception but the prevailing condition as to public utilities in this state. The Commission said:

"The history of the utility companies coming to its (the Commission's) notice has been one of almost continual purchase and sale. The fact that the utilities have changed hands frequently results in a loss of records covering the early years of development. The Commission, therefore, may frequently find it unable to secure any reliable information or data covering the original cost of the utility under investigation." PUR1920A p. 771.

Upon the hearing in this case one Rice, a valuation engineer of the Northern States Power Company, testified in behalf of the company. He stated that the records of the company as to expenditures and investment in the property prior to 1910 were meager and that such records did not disclose the amount of investment in the utility properties.

The lawmakers who enacted the Public Utilities Act of this state in 1919 realized that as to many public utilities it would be impossible to obtain an accurate account of the original actual cost of utility properties; and that in many instances it would be impossible to establish any satisfactory basis for determining the amount of moneys actually and prudently invested in the utility's properties. So, it was only natural that the lawmakers

should provide, as they did, for the various methods of ascertaining value; but notwithstanding this, they very clearly and specifically provided only one controlling standard or measure which the Commissioners should apply in determining present fair value. They said: "The value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property."

The act does not require the Commissioners in every case, or in any case, to make investigation or inquiry as to all the subjects enumerated in § 37 of the act. It charges the Commissioners with the duty to "investigate and determine the value of the property of every public utility used and useful for the service and convenience of the public." It enumerates certain elements of value that are to be excluded, and it provides that "in ascertaining the value of the various kinds and classes of property of each public utility, the Commissioners shall have authority to ascertain and report, in such detail as it may deem necessary, as to each piece of property owned or used by such public utility to show separately" certain enumerated ultimate facts, such as the original cost of land; the value thereof as compared with other neighboring lands of similar character as to location and use; the cost of new production, as of a date certain, of physical property other than land; depreciation, if any, of such physical property, from the new reproductive cost, as of a date certain; and the net value, as of a date certain, of such physical property, derived by deducting the amount of depreciation from new reproductive costs. The scope of the investigation or inquiry is primarily for the Commissioners to determine, and must necessarily depend largely upon the facts in each case. Obviously, the investigation in a case where there are available complete original records and vouchers of all income and outgo will assume a different scope and require different proof from that required in a case where the original records and vouchers are nonexistent, and where, in order to ascertain the original cost, it becomes necessary to establish what probably was paid for the property by showing the prevailing prices for work and materials at the time the property was acquired. Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra,* 262 US at p. 294.

The North Dakota Public Utilities Act was not drawn blindly. Those who prepared and enacted the law had knowledge of similar laws in other states, as well as the difficulties that had arisen in ascertaining the facts pertinent to a determination of the fair value of the property of a public utility. The very terminology of the act indicates a knowledge of the standard that had been accepted and approved in Massachusetts and elsewhere. The term "honestly and prudently" was not used accidentally. The lawmakers doubtless realized how difficult it would be in many instances for the Commissioners to obtain direct proof of "the money honestly and prudently invested in the property" and so in order that the Commissioners might not be hampered by lack of proof, they specifically authorized

the Commissioners to make investigation and obtain proof of such facts as would be likely to aid them in performing their duties under the act in cases where the best proof might not be available. The authority to the Commissioners to make such investigation is in no sense inconsistent with the intention of the legislature so clearly expressed, inserted in the act by amendment, that "the value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property."

It will be noted that the Wisconsin Commission in its decision in Milwaukee Electric R. & Light Co. v. Milwaukee, PUR1918E 1, in seeking to ascertain and determine the amount of "the investment reasonably and prudently made" considered many of the ultimate facts that § 37 of the Public Utilities Act of this state authorizes the Commissioners to ascertain as a basis for a determination as to "the value of the property of a public utility company" measured by "the money honestly and prudently invested." The Wisconsin Commission apparently did not find that the ascertainment of such facts and consideration thereof conflicted with the ascertainment and determination of "the amount which had been prudently and reasonably invested in the property." On the contrary, that Commission deemed such ultimate facts pertinent and material to a determination of "the investment reasonably and prudently made," which it said "is the most equitable standard of fair value for rate making between the utility and the consumer, where such investment may be ascertained."

The "value" that the Commissioners are authorized to determine for rate-making purposes is a special value, and important elements of value that the utility would be entitled to be compensated for in case the state or a political subdivision acquired the property by purchase or condemnation are properly excluded in fixing the rate base. Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra,* 262 US at pp. 310, 311, PUR1923C at p. 217.

The legislature used the term "the money honestly and prudently invested in the property." The investment was not "thus qualified for the purpose of applying an ultra-critical or arbitrary rule which would exclude from the value, investments which, under ordinary circumstances, would be considered reasonable." It was intended to require the Commissioners in determining the rate base to include all expenditures honestly and prudently made in constructing the plant and in building the business even though subsequent events might show that the investment was not in fact a wise one. For "it may not be possible to avoid adverse conditions and the utility may be entitled to justify charges which at the time the matter is under investigation seem large." Waukesha Gas & E. Co. v. Railroad Commission, 181 Wis 281, 301, PUR1923E 634, 194 NW 846, 854. The principal reason for qualifying and limiting the investment to one honestly and prudently made was to exclude from the rate base what might be found to be dishonest or obviously wasteful or imprudent expenditure. 1 Whitten,

Valuation of Public Service Corporations, p. 595; Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra*, 262 US at p. 289; Waukesha Gas & E. Co. v. Railroad Commission, *supra*.

The legislature sought to protect the public against rates based on padded values, such as hidden bonuses in security issues, the public payment for the use of property which in reality did not exist, and payment for services which the utility had not rendered. The legislature, also, sought to safeguard the rights of the public utilities, and to protect them against any invasion or infringement of their constitutional rights. Under the terms of the law, the Commissioners must prescribe reasonable and just rates, rates which will enable the utility to earn the reasonable cost of performing the service it is performing for the public. Such cost to include not only operating costs, depreciation and taxes, but, also, reasonable and compensatory return on the capital that has been honestly and prudently invested in the plant and business so as to enable the utility to perform the public service that it has undertaken to perform and is performing.

The term "historical cost" is synonymous with "prudent investment;" but is not synonymous with "book cost," "original cost," or "actual cost." Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra*, 262 US at p. 294. See also, Galveston Electric Co. v. Galveston, 258 US 388, 391, 66 L ed 678, 681, PUR1922D 159, 42 S Ct 351. So, when the Commissioners stated, in their decision, that they felt historical cost should be given the greater weight in determining the value of public utility property for rate-making purposes, they did not establish an arbitrary standard or take any arbitrary action. They were accepting the standard prescribed by the legislature. They gave the greater weight to the factor the legislature had said should be given controlling weight in the determination of the value of the property of a public utility.

In the majority opinion, reliance is placed upon the practical construction which it is said the Commissioners have placed upon § 37 of the Public Utilities Act. It is true that in construing a statute of doubtful meaning courts will give weight to the contemporaneous and continued practical construction that has been placed upon such statute by officers charged with the duty of executing and applying it. But here the administrative construction referred to by the majority was "neither contemporaneous nor continuous." Wisconsin C. R. Co. v. United States (1896) 164 US 190, 205, 41 L ed 399, 404, 17 S Ct 45, 49. " 'Contemporaneous construction,' within the meaning of the rule, is the construction which executive departments or officers charged with the enforcement of the statute give to it at or near the time of its enactment." 59 C J 1029.

The majority opinion concedes that the contemporaneous construction that was placed upon § 37 of the Public Utilities Act as to the valuation of properties by the Commissioners charged with the enforcement of the statute at or near the time of its enactment was contrary to that now placed upon it in the majority opinion in this case. Nor can it be said that

the practical construction which the majority opinion says was initiated by the Commissioners by a decision rendered some four years after the statute was enacted (and contrary to the former and contemporaneous construction) has been uniform and continuous. The decision in this case was rendered in March, 1938. In that decision the Commissioners said:

"On this question of valuation this Commission has consistently followed the Smyth v. Ames Case (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, decision, requiring that historical cost and cost of reproduction be considered and given due weight, but adhering to the precedent of this Commission, we feel that the historical cost of the property of this utility should be given a greater weight than the cost of reproduction, and in this decision we have weighed them together, giving to each such weight as in our judgment was necessary to arrive at a proper and fair conclusion, considering all of the facts and circumstances disclosed by the evidence, all of which was given due consideration." (22 PUR(NS) at p. 370.)

In the decision in Re Otter Tail Power Co. 33 PUR(NS) 301, 310 (decided April, 1940), the Commissioners said:

"Subsection (g) of § 4609c37 of the 1925 Supplement provides in part,

" 'The value of the property of a public utility, as determined by the Commission, shall be such sum as represents as nearly as can be ascertained the money honestly and prudently invested in the property.'

"Reading this sentence in conjunction with the entire section, it was, in the opinion of this Commission, the intention of the legislature to require the greater weight to be given to historical cost in determining the fair value of any public utility. In the opinion of this Commission, such requirement is in keeping with the principles laid down by the Supreme Court in the Smyth v. Ames Case, *supra*, and is further in keeping with sound principles of utility regulation."

The statement from the Commissioners' decision in Re Western Electric Co. PUR1923C 820, 830, quoted in the majority opinion that "the value of the property of a utility must be determined as of the time of the inquiry," did not constitute a reversal of former practice or rulings. Apparently the Commissioners had consistently construed and applied the statute on the theory that the value of the property of a utility must be determined as of the time of the inquiry.

In the decision in Logan v. Bismarck Water Supply Company, PUR 1923B 450, 476, 477 (decided Dec. 30, 1922), the Commissioners said: "It is true that in the past the Commission has given considerable importance to, and has largely been influenced by, original cost data, in determining the value of a utility's physical plant for rate-making purposes, whenever this information was available; though in several instances where, by reason of the destruction of the utility's records, the data could not readily be secured, the Commission has not hesitated to apply the cost of reproduction new less depreciation method. It will be found, however, that the Commission has never been in any doubt regarding the date as of which the valuation was to be determined. Laying aside the injunction

of the statute that certain facts must be ascertained 'as of a date certain,' regardless of what this means, the Commission has ever attempted to ascertain and determine the value as of the date of the inquiry even though historical costs were considered to have an almost controlling bearing upon this valuation."

The construction that the Commissioners originally placed upon § 37 of the Public Utilities Act and the practice then followed and the construction adopted and the practice following in this case and in Re Otter Tail Power Co. *supra,* were precisely the construction that had been given to, and the practice that had been followed in administration of, the Public Utilities Act of Wisconsin, according to the statement made by the supreme court of Wisconsin in its decision in Waukesha Gas & E. Co. v. Railroad Commission, *supra,* PUR1923E at p. 653: "In determining the present fair value of a public utility operating under our public utility law . . . controlling weight should be given in the valuation of the plant . . . to the investment cost where the investment has been prudently made."

I am fully aware of the decisions of the Supreme Court of the United States expressing disapproval of prudent investment as the sole ground for a rate base, and the repeated approval by that court of what is known as the rule of Smyth v. Ames, *supra.* I am also aware of the pronouncements of the same court upon the question of going value as an element in valuation of utility properties. But, these decisions cannot change the clear words of our statute or authorize the court to do so, and to re-write it and require the Commissioners to adopt a measure of value different from that which the legislature has prescribed. Even where a statute contravenes the Constitution, the court may not, under the guise of construction, re-write it so as to make it conform to the Constitution. To do so would be to legislate, and this "court can only construe. It cannot legislate. Words should not be read into or read out of a plain statute. . . . It must be left as written by the legislature." Rogers-Ruger Co. v. Murray (1902) 115 Wis 267, 271, 91 NW 657, 658, 59 LRA 737, 95 Am St Rep 901; 1 Lewis Sutherland, Stat. Const. (2d Ed) p. 136.

Notwithstanding the disapproval by the Supreme Court of the United States of the prudent investment theory, some of the states have continued to apply it, and the Supreme Court of the United States has refused to interefere with rates based upon a valuation reached by that method. Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission (1934) 291 US 227, 78 L ed 767, 54 S Ct 427, 2 PUR(NS) 225.

In Los Angeles Gas & E. Corp. v. California R. Commission, *supra,* the state Commission had made its valuation on the basis of prudent investment (West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 693, 79 L ed 1640, 1658, 8 PUR(NS) 433, 452, 55 S Ct 894), and also had held that going concern value, if considered as an independent item, "should be measured with due regard to the actual cost" as shown in the

utility's accounts. In the Supreme Court of the United States, it was contended that the erroneous method pursued by the Commission vitiated its order. The court emphatically rejected that contention, saying:

"We do not sit as a board of revision, but to enforce constitutional rights. . . . The legislative discretion implied in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof, and the court may not interfere with the exercise of the state's authority unless confiscation is clearly established." 289 US at pp. 304, 305.

In Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission, *supra,* the court sustained a valuation of the utility's property made by the Public Service Commission upon the basis of the original reasonable cost. In the decision in that case, it was said: "Appellant attacks the finding of fair value upon the grounds that it was based solely on the original cost of the bridge property and that the amount paid by the appellant for the bridge was less than its fair value at that time and less than its fair value in 1930. It is not open to question that the reasonable cost of the bridge is good evidence of its value at the time of construction. And we have said that 'such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices.'" 291 US at p. 234, 2 PUR (NS) at p. 228.

In the Federal Water Power Act, Congress adopted "net investment" as the rate base. 41 Stat. at L. 1063, 1067, 1073, 1071, Chap. 285, 16 US CA §§ 796, 799, 813, 807. "Net investment" as defined in the act "means the actual legitimate original cost" of the project "plus similar costs of additions thereto and betterments thereof" minus certain items; and in any valuation of the property "for purposes of rate making," no value may be claimed or allowed in excess of the net investment; and the United States is authorized to take over, maintain and operate, any project after the expiration of any license "upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken;" but going value may not be included as a part of the value to be paid for by the government in event it takes the property over or in determining the rate base while the property is being operated by the utility company. 16 USCA §§ 813, 807, 796, 799; In Re Safe Harbor Water Power Corp. (1940) 34 PUR(NS) 236, 249. The net investment thus prescribed as a rate base under the Federal Water Power Act is equivalent to prudent and honest investment.

The Public Utilities Act of this state has carefully safeguarded the constitutional rights of public utility companies. It grants to every utility the right of notice and hearing. The utility may introduce evidence at the hearing; and all evidence introduced must "be reduced to writing and certified under the seal of the Commissioners." Utilities Act, § 42. The act provides for a judicial review of the orders of the Commissioners by means of an appeal to the district court, and to this court. The Act provides that: "On such appeal the lawfulness of the decision or final order shall be inquired into and determined on the record of the Commissioners as certified to by it." Public Utilities Act, § 35; State ex rel. Hughes v. Milhollan (1923) 50 ND 184, 195, 195 NW 292.

The right of the state to regulate a public utility is as complete as though such right were expressly reserved in the authority granted to the utility to conduct its business within the state. 51 C J 10; Pond, Public Utilities, § 414. In pursuance of its general power to regulate public utilities, the state has authority to regulate the rates to be charged by the utility for its produce or service. But, the power to regulate a utility and fix its rates is limited by the consideration that the property belongs to the utility and not to the state, and the regulation must not operate to take or damage the property of the utility for public use without just compensation, to deny to it the equal protection of the laws, or deprive it of its property without due process of law.

"The fixing of rates is a legislative act. In determining the scope of judicial review of that act, there is a distinction between action within the sphere of legislative authority and action which transcends the limits of legislative power. Exercising its rate-making authority, the legislature has a broad discretion. It may exercise that authority directly, or through the agency it creates or appoints to act for that purpose in accordance with appropriate standards. . . . When the legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. . . . In such cases the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the legislative agency acting within its statutory authority.

"But the Constitution fixes limits to the rate-making power by prohibiting the deprivation of property without due process of law or the taking of private property for public use without just compensation." St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 50, 80 L ed 1033, 1040, 1041, 14 PUR(NS) 397, 403, 56 S Ct 720, 725.

I am unable to see any reasonable basis for saying that the state deprives a utility company of its property without due process of law, takes such property for private use without just compensation, or denies to it the equal protection of the laws, when it pro-

vides that the utility shall be allowed for the public service that it has undertaken to perform, and to which its property is devoted, all operating expenses; a fair return upon its entire property devoted to public service valued on the basis of all "the money honestly and prudently invested" in such property: and an additional return sufficient to compensate for all depreciation of such property so that "at the end of any given term of years the original investment remains as it was at the beginning," and all additions thereto and betterments thereof that the utility has furnished or paid for remain as they were when they were made.

The majority opinion holds that "where the evidence showed that a utility had a history of continuous profitable operation, it was the Commission's duty to consider and allow going concern value in determining the fair value of the utility's property;" and, also, that in such case, it is the duty of the Commission to make a separate finding "setting forth the amount at which going concern value has been allowed." I disagree with this holding. In § 37 of the Public Utilities Act, the lawmakers enumerated certain factors which they said the Commissioners should "have authority to ascertain and report, in such detail as [they] may deem necessary, as to each piece of property owned or used by such public utility;" but by no stretch of the imagination can "going concern value" be said to be one of the factors so enumerated. Ordinarily, the enumeration in a statute of the things upon which the statute is to operate is deemed to evidence an intention that those not enumerated are to be excluded. 2 Lewis Sutherland, Statutory Const. (2nd Ed) p. 9116 et seq.; 59 C. J. 984. Here the lawmakers enumerated certain factors to be considered by the Commissioners in determining the value of utility property for rate-making purposes, and they said that the Commissioners shall "exclude from such valuation all unearned value or unearned increment."

The act contemplates that the Commissioners, in ascertaining and determining the value of public utility property for rate-making purposes, shall include everything used and useful for the service and convenience of the public for which the utility has made honest and prudent expenditure; but that the Commissioners shall not include in the valuation which it makes any element or increment of value that was provided by the public without cost to the utility, or that was paid for by the public. Thus, the act provides that there shall be included in the valuation as determined by the Commissioners whatever sum the utility has "actually paid to any political subdivision of the state or county as a consideration for the grant of [a] franchise or right by reason of a monopoly or merger," but that there shall be excluded from such valuation "the value of any franchise or right to own, operate or enjoy the same in excess of the amount . . . actually paid . . . as a consideration . . . for such franchise or right." Idem, § 37 (§ 4609c37, Supplement).

The reason for considering "going concern value" as a distinct element in the rate base disappears when "the money honestly and prudently invested" in the property of the utility is given controlling weight in determin-

ing present fair value. When honest and prudent investment is adopted as the controlling factor, every item and increment of value that has been contributed or supplied by the utility in the building of its property as a going concern (and for which the utility has not been compensated by the public) is assigned to capital investment, and as such included in the valuation for rate-making purposes; and any item or increment of value that has been contributed by the public and not by the utility may not be included in such valuation, because in such case the value was not brought into being by "the money honestly and prudently invested" by the utility, but by contributions made by the public for public and not for private benefit. Thus, where the cost of attaching new business, setting up and maintaining adequate records, procuring and training a competent staff, and building an efficient organization have been charged to and included in operating revenue and thus actually paid for by the public and not by the utility, there is no valid reason for including such elements in the valuation of the utility property for rate-making purposes. In such case, these elements of value have been paid for by the public and not by the utility, and there would be no more reason for including them in the value fixed as a rate base than to include therein the franchise and the monopoly the utility enjoys when the same have been provided by the public without cost to the utility. Idaho Power Co. v. Thompson, 19 F(2d) 547, 560, PUR1927D 388. There is no more valid reason for including as an element of value for rate-making purposes under the guise of "going concern value" some item or increment of value that the public has contributed or paid for than to include the amount of cost resulting from depreciation, where the utility has already been compensated for such depreciation by payments made by the public. In either case, the utility would receive a return upon something it has not invested or expended. It would reap from another's sowing. While a utility is entitled to compensation for the depreciation of its property (Knoxville v. Knoxville Water Co. [1909] 212 US 1, 53 L ed 371, 29 S Ct 148), it may not, either directly or indirectly, add to or include in its capital investment, the cost of depreciation for which it has been compensated by the public as a result of rates under which it has been operating. Louisiana R. Commission v. Cumberland Teleph. & Teleg. Co. [1909] 212 US 414, 53 L ed 577, 29 S Ct 357. Where the property has been depreciated, and the public have compensated the utility for such depreciation, the "original," "actual," or "prudent and honest investment" has to that extent been lessened, and the present value of the property accordingly decreased.

"Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that, at the end of any given term

of years, the original investment remains as it was at the beginning." Knoxville v. Knoxville Water Co. *supra,* at p. 13 of 212 US.

But, a utility company may not take any "part of the money raised to pay for depreciation," and "which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the [utility] would obtain a return and distribute it to its stockholders." Louisiana R. Commission v. Cumberland Teleph. & Teleg. Co. *supra,* at p. 425 of 212 US.

As stated in the majority opinion, the company as a basis for its demand for allowance of going concern value "offered evidence to show, the steady growth of its business and the communities served, its good credit standing, its excellent record in paying its bond interest and preferred stock dividends, its good public relations; that it had a well-trained, competent, and loyal staff of employees; and that it had a splendid set of records." Assuming that these are all elements in the value of the utility property, as a going concern, there is nothing to show that any of these elements were brought into being at the expense of the company.

"In this case, what may be called the inception cost of the enterprise entering into the establishing of a going concern had long since been incurred. The present company and its predecessors had long carried on business. . . . For aught that appears in this record, these expenses may have been already compensated in rates charged and collected." Des Moines Gas Co. v. Des Moines, 238 US 153, 165, 59 L ed 1244, PUR1915D 577, 584, 35 S Ct 811, 815.

The principal plants involved in this proceeding were not constructed by the Northern States Power Company, but were acquired by it in 1910 as "established and going concerns." Fargo v. Union Light, Heat & P. Co. (ND) PUR1920A 764, 781. In a proceeding to determine the reasonableness of rates (decided in September 1919), the utility sought an allowance for going concern value. The Commissioners refused to allow going concern value. In the decision dealing with this, it is pointed out that the utility plants were purchased and taken over by the Northern States Power Company in 1910. That at that time they were "established and going concerns and undoubtedly were so purchased by the company;" and that "expenses that have been incurred since that date for advertising and soliciting business have been paid out of income and are included, therefore, in operating expense." (PUR1920A, at p. 781.)

In this case the utility asks for an allowance of $250,000 for going concern value. At least part of the allowance so claimed is for cost of establishing and developing business that may have been expended by the "original investors." The principal witness for the utility as to going concern value (the valuation engineer, Rice) in his testimony said:

"As a matter of fact there may have been large quantities of money invest-

ed in this property of which we cannot find the records. The records for this company prior to 1910 are meager. I would assume, and I think it is a reasonable assumption, that the original investors did spend large amounts of money in developing this business. Now, I say the investors must have spent it because at the outset of any property and its business there are inadequate returns to cover such development costs. If they were not met by the investors the utility could not have been started."

Q. But you have no specific item which you might be able to cite of that kind, have you? *A.* No, sir, I have not.

In dealing with the question of going concern value, the Commissioners in their decision in this case said: "When this property was appraised by our engineers and those of the company, the fact that this property was in use and profitable was necessarily considered by them, otherwise certain items would have been valued at much less and the property would have been depreciated to a greater extent so that indirectly the so-called going concern value was given the consideration to which it was entitled, but we are unable to agree with the witnesses of the company that, in addition to the consideration which the engineers gave to that property as an element of value because of its profitable use, there should now be added an arbitrary amount of any size. If this property is today worth $250,000 more than its actual physical value because it is in use in a profitable business, this increased value, if in fact it exists, is due, mostly if not totally, to its able management and liberal patronage given to the company by its customers, and this has already been paid for in full by those customers who made that increased value possible. The direct cause of this increased value is the patronage that this company has been favored with, and we can see no reasonable ground why, for the purposes of these proceedings which are exclusively rate making, the patrons of this company should be compelled to pay to the company any return on the patronage which they have granted it and for which they have already paid more than a reasonable compensation, as it must be borne in mind that the records of the company filed with this Commission show that for many years past the patrons of this utility have paid rates for service far in excess of rates that would have been necessary to bring to the utility a reasonable return on its properties and investments."

(Then follows a table, compiled from the reports of the utility to the Commission, showing the rate of return to the utility before depreciation upon its investment in the electric and gas departments for the period from 1922 to 1936, both inclusive. This table shows a rate of return in the electric department with a high of 33.1 per cent in 1926 and a low of 19.8 per cent in 1936; and in the gas department a high of 21.7 per cent in 1924 and a low of 6.2 per cent in 1936.)

It is not likely that the company has expended moneys contributed by its stockholders in acquiring or training competent and loyal employees. It is more likely that such costs were defrayed out of moneys collected by the company from its customers as operating costs.

"Presumably it pays experienced employees, out of operating revenue, what, in the light of their skill and experience, their service is worth. No contract is shown obligating them to remain, and out of consideration for their training and experience to render service for less than it is worth. . . . Rates to consumers are made to cover the cost, and, with the exception of the early formative period, they have been charged to and paid out of operating revenue, and such increment of value as may accrue is the normal fruitage of such revenue, and not of capital investment." Idaho Power Co. v. Thompson, 19 F(2d) 547, 561, PUR 1927D 388, 426.

The good credit standing of the company, and its record for prompt payment of bond interest and preferred stock dividends evidence competent management, but evidence, also, that the company has been allowed sufficient revenue to enable it to meet its obligations.

"Ability to finance the enterprise under just conditions is but a normal attribute of a qualified utility corporation, and cannot be capitalized under the guise of going value. Given its franchise, protected against competition, and permitted to charge rates which will net a reasonable return upon the value of its properties and upon an adequate working capital, it is only doing what is to be expected when it promptly discharges its obligations and thus maintains its credit." Idaho Power Co. v. Thompson, *supra,* at p. 427 of PUR1927D.

ALABAMA PUBLIC SERVICE COMMISSION

Re Alabama Power Company

[Non-Docket 1338.]

Service, § *146 — Contract restriction of obligation — Power shortage — Drought — National defense.*

A power company, facing a power shortage because of drought and an abnormal increase in demands for electric service because of a national defense program, should be allowed to attach a temporary emergency service regulation, in the form of a rider, to new contracts for electric power service for industrial and large general and rural power service and for commercial service, providing that temporarily the company will supply power only when, as, and if it has the same available in excess of power previously sold and that the company shall be the sole judge of the availability of such excess power, with the further provision that as more power becomes available such rider and similar riders will be revoked in the order in which the contracts to which they are attached were approved by the company.

[July 2, 1941.]

RE ALABAMA POWER CO.

PETITION *for approval of temporary emergency service regulation; approval granted.*

By the COMMISSION: On June 27, 1941, Alabama Power Company filed for approval by the Commission a temporary emergency service regulation in the form of a rider to be attached to new contracts for electric power service for:

1. Industrial and large general and rural power service; and
2. Commercial service.

A copy of the rider which is to apply to and become a part of all new contracts for industrial and large general and rural power service is attached hereto, marked Exhibit "A," and made a part hereof. A copy of the rider which is to apply to and become a part of all new contracts for commercial service is attached hereto, marked Exhibit "B," and made a part hereof.

Petitioner represents that the approval of the attached riders is made necessary temporarily during the present emergency conditions brought about by the drought and the abnormal increase in the demands for electric service because of the national defense program.

The Commission has given consideration to the petition and finds its provisions consistent with the public interest and it is therefore approved as shown in the order herein.

ORDER

Upon application and the representations made therein and the evidence submitted therewith and without formal hearing,

It is *ordered* by the Commission, that the petition of the Alabama Power Company be and it is granted and the temporary service regulations set out on Exhibits "A" and "B," attached hereto and made a part hereof, be and the same are approved as shown in this order, effective as of the date hereof.

Said approval shall be without prejudice to any interest affected thereby in any future investigation by the Commission, upon complaint or otherwise, of the reasonableness and propriety thereof.

The Commission reserves full jurisdiction of the subject matter herein and of all contracts of which said rider or riders are made a part for the purpose of making any further order relating thereto as may be found just and reasonable and proper.

EXHIBIT "A"

Rider to be attached to contract for electric power service
Dated ....., 1941
Between Alabama Power Company and

In view of the large increase in the demands for power made upon the company's system for national defense purposes and the conditions brought about by drouth, this contract is approved by the company with the specific reservation (1) that until this rider is revoked the company will supply power hereunder only when, as, and if it has the same available in excess of the power heretofore sold, and (2) that the company shall be the

sole judge of the availability of such excess power.

It is understood and agreed that as more power becomes available in the generating and distributing system of the company through alleviation of existing drouth conditions, this rider and similar riders will be revoked in the order in which the contracts to which they are attached were approved by the company.

EXHIBIT "B"

Rider to be attached to "application for commercial service"
Dated .....

In view of the large increase in the demands for power made upon the company's system for national defense purposes and the conditions brought about by drouth, this contract is approved by the company with specific reservation (1) that until this rider is revoked the company will supply power hereunder only when, as, and if it has the same available in excess of the power heretofore sold, and (2) that the company shall be the sole judge of the availability of such excess power.

It is understood and agreed that as more power becomes available in the generating and distributing system of the company through alleviation of existing drouth conditions, this rider and similar riders will be revoked in the order in which the contracts to which they are attached were approved by the company.

....., Customer

Approved:
Alabama Power Company
By .....

I understand that, due to the drouth and the unprecedented increase in power requirements for national defense purposes, all customers of the company supplied with similar service are being asked to voluntarily curtail their power uses as much as possible and at least to the following extent:

1. Exterior and show window lighting—100 per cent
2. Interior lighting to safety levels
3. Conservation of motor power as much as possible
4. Air conditioning equipment to be operated at base temperature setting of not less than 83-degree F. and humidity of 65 per cent or more
5. 50 per cent of elevators if more than one

In the event service is provided to me under conditions of the foregoing application and rider, I voluntarily agree to curtail my uses to the above schedule or to such other schedule as may be necessary in the future.

..... Customer

The Complete Answer

To Your Trenching Requirements—

THE CLEVELAND "BABY DIGGER"

MODEL "95"

Equally Efficient for Long Line Trench or City Distribution

Literally thousands of miles of completed work have proven the correctness of the "Baby Digger" design. The forerunner of all full-crawler trench excavators, the "Baby Digger" stands supreme as a compact, light weight, easily transported trencher. With it you have the best chance to machine dig your work. Compact, fast, flexible, powerful and with all dead weight eliminated, the "Baby Digger" exactly meets conditions, whether it's a cross-country transmission line or a short service extension in the city.

Easy to operate and transport and with the built-in qualifications to resist wear and abuse, the "Baby Digger" represents the utmost in economy and efficiency and assures maximum machine usage. Only the "Baby Digger" gives you such power, speed and strength and such a wide digging range in such a small package. Write today for complete details on this modern most usable "Cleveland."

A big time-saving "Cleveland" feature — Truck speed transportation on special trailers.

THE CLEVELAND TRENCHER CO.

"Pioneer of the Small Trencher"

20100 St. Clair Avenue . . . . . Cleveland, Ohio

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

Potomac Electric Power Plans $30,000,000 Expansion

A CONSTRUCTION program of the Potomac Electric Power Co., which will include new additions to plants and generating machinery and distributing facilities, will require the expenditure of at least $30,000,000 from 1941 to 1943, the company recently announced.

The company already has installed one 50,000 kw turbine and boiler at its Buzzard Point plant and has ordered three more units which will cost $11,395,000.

When the company's present expansion program has been completed the combined generating capacity of its Benning and Buzzard Point stations will be 72 per cent greater than it was at the beginning of 1940, it was stated.

Distribution system additions and service installations also are being increased at a rate of about 25 per cent over 1940.

Equipment Items

Special Indoor Suspension-Type Transformers

A complete new line of suspension-type transformers for use with indoor luminous-tube signs has been announced by the General Electric Company. It embodies the basic features of the "Streamliner," G-E's lumnious-type transformer for outdoor installation, which has attained a 99.93 per cent performance record since the first units were installed in 1938.

Leading features of the new line include spaced winding construction, which reduces voltage stresses, balanced core design, improved high-voltage bushings, stronger insulating compound and smaller size which permits out-of-the-way installation even in crowded display windows, and the light weight of the transformer makes handling easy.

Models are available with a variety of finishes and installation accessories. Write the manufacturer for further information.

Tests Mobile Capacitor Unit

With increasing reactive kva burden on utility distribution system, portable capacitor units that can readily be transported from one point on the system to another, are receiving increased attention. Recently a new 540-kva Westinghouse mobile unit for use by the Pennsylvania Power and Light Company was tested under supervision of two of that company's engineers, at East Pittsburgh, Pa.

The new portable unit will provide on-the-spot correction for reactive current at any required point on the distribution system; to raise the power factor at transformer banks and substations temporarily, relieving overloaded apparatus of unnecessary reactive burden until adequate transformers or permanent capacitors can be installed. The mobile unit can also be used to provide actual field checks on calculated capacitor installations at specific system locations.

The new mobile capacitor weighs only 13,200 pounds, has 540-kva total capacity, obtained from three unequal banks of 15 kva inerteen capacitor units.

Low-Frequency Linear Time-Base Generator

A low-frequency linear time-base generator, to be known as Type 215, has been developed by the engineers of Allen B. Du Mont Laboratories, Inc., Passaic, N. J., for release this fall. This instrument will be especially valuable in facilitating studies of low-frequency phenomena such as found in vibration studies, strain analyses, physiological applications and similar usages.

This instrument is housed in the standard Du Mont portable metal case, with leather carrying handle, and measures 14 x 8 x 17½ inches. It weighs 35 lbs.

Compact Unit Substations

A new line of metal-enclosed, factory-built unit substations, compactly designed for power and lighting service in industrial plants, power-station auxiliaries, defense projects, and office buildings has been announced by the General Electric Company.

The substations consist of one or more metal-clad switch-gear units in the incoming-line section, a 3-phase transformer section filled with oil or Pyranol, and one to 15 metal-enclosed air circuit breakers on the low-voltage-feeder side. They can be installed indoors or outdoors to transform power from the 2300- to 15,000-volt range to 600 volts or below and to provide protection and control for the low-voltage feeders.

Equipment Items (*Cont'd*)

Turbine-Generator Balancing Machine

A portable dynamic balancing machine designed and recently introduced by the General Electric Company makes correction of unbalance of turbines, generators, or both rotating elements much simpler, faster, and more complete than methods formerly used.

The balancing equipment consists of three principal parts; a sine-wave alternator, a vibration velocity unit, and an indicating unit and its associated circuits, all fitted in a handy carrying case. It may be used during initial manufacture or installation of a rotor; after subsequent servicing; or to correct unbalance caused by pitting or corrosion. Rotors may be checked with the device while running in their own or in substitute bearings.

Photoswitch Electronic Level Control

Photoswitch level control series P16 recently announced by Photoswitch, Inc., Cambridge, Mass. provides on and off valve or pump control of any liquid.

Complete equipment is available for single level indication and control, on and off pump-up and pump-down control at two levels, boiler feedwater control and low level safeguards. Probe fittings have been designed for high and low pressure and temperature requirements as well as for sanitary installations.

Since series P16 controls do not involve mechanical float or pressure switches, they are easily installed and free of maintenance. Bulletin No. 1100 describes the complete line of Photoswitch level controls.

Plastic Street Light Reflector

A new plastic reflector for street lighting units, made of Textolite, a phenolic-resin compound, has been announced by the General Electric Company. It is rust- and warp-proof, resists chipping, and is lighter, yet stronger than the previous metal type.

Covered with Glyptal, an alkyd resin, the plastic reflector is green on top and white underneath.

The collar of the unit is made of copper, and is constructed to fit the standard hood. The reflector is available in the standard dome, 20-inch diameter, radial-wave type.

Improved IAC Relay

The General Electric Company announces an improved a-c tripping form of IAC relay, rated to interrupt 100 amperes around a trip coil. The old design was based on the carrying capacity of the contacts, which was rated 50 amperes for two seconds. The new design employs a thicker contact brush and more massive contacts, which retain the heat thrown off by the arc, and permits a rating of 100 amperes for two seconds.

The Ideal No. 60 Electric Brazer

The advantages offered by a silver soldered joint over ordinary soft solder—greater strength, lower resistance and a much higher melting point—can now be readily obtained by the use of an electric brazer developed by the

Ideal Commutator Dresser Co., Sycamore, Ill.

The jaw ends of the heating pliers are removable so that different shaped jaws can be substituted depending on the work to be held.

General Electric Disposall Unit

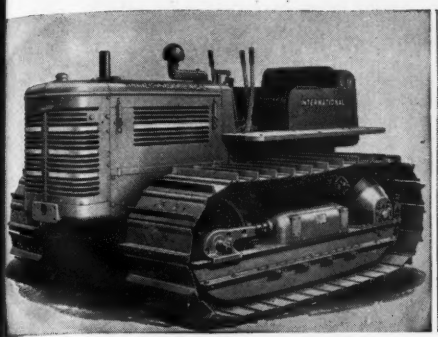
A new model of the General Electric Disposall, more compact and yet of greater effective capacity than its predecessors, has been announced by the electric sink section of the General Electric Company, Bridgeport, Conn. Attached to the sink drain opening, the Disposall grinds and eliminates all food waste at the sink.

By the addition of new cutting surfaces, the grinding speed of the new model has been increased approximately 400 per cent. One of the greatest of the improvements is the permanent lubrication of the bearing, eliminating the periodic lubrications formerly required.

The FA-3 Disposall is equipped with a G-E ¾ horse power motor, completely enclosed within the unit to provide a more streamlined appearance. The list price of the unit is $99.50, F.O.B. Fort Wayne, Ind.

Fluorescent Kitchen Light

Fluorescent lighting has been incorporated in kitchen cabinets built by the St. Charles Manufacturing Co., St. Charles, Ill. All wall cabinets 21 inches or more wide can be equipped with fluorescent light, recessed in a specially designed bottom plate so that the tube itself is not visible at normal eye level. A convenient outlet is provided for electrical appliances for operation on alternating current only.



TYPICAL EQUIPMENT THE T-6 OPERATES

Bulldozers—6 to 7 ft. • Bullgraders—7½ to 8½ ft. • 2-wheel scrapers—2½ to 3½ yds. • Rollover scrapers—½ to 1 yd. • Blade graders—7 to 8 ft. • Front-end shovel—½ yd. • Cranes—1 ton @ 8-ft. radius • Towing winches—10,000 lbs. @ 100 ft.p.m. • Oil field winches—25,000 lbs. @ 40 ft.p.m. • Snow plows—8-ft. cut • Terracers (light)—8 ft. • Small logging arches and fire-line plows.

TYPICAL EQUIPMENT THE T-9 OPERATES

Bulldozers—6½ to 8 ft. • Bullgraders—8½ to 10 ft. • 2-wheel scrapers—3 to 4 yds. • 4-wheel scrapers—4 to 5 yds. • Rollover scrapers—1 to 1¾ yds. • Blade graders—8 to 10 ft. • Front-end shovel—¾ yd. • Cranes—2 ton @ 8-ft. radius • Towing winches—12,500 lbs. @ 100 ft.p.m. • Oil field winches—35,000 lbs. @ 35 ft.p.m. • Snow plows—8 to 9-ft. cut • Terracers—8 to 10 ft.

LOTS OF PUSH AND PULL FOR THEIR SIZE

INTERNATIONAL T-6 and T-9 TracTracTors with Distillate or Gasoline Engines

GOOD THINGS come in pairs when you're in the market for medium-sized crawler tractors with gasoline engines. These International TracTracTors give you plenty of push and pull for their size. Both the T-6 and T-9 *develop more drawbar pull than any other tractors in their size and power range.*

The T-6 and T-9 have the same dimensions as the popular TD-6 and TD-9 DIESELS. Both have all the time and money-saving features of modern TracTracTor design. For example, there's Tocco-hardening—which Harvester pioneered—in crankshafts and track rollers. The specially designed combustion chamber, providing smoother operation, longer engine life, and remarkable fuel economy, is another performance feature you'll appreciate.

Ask the nearest International Industrial Power dealer or Company-owned branch for full information about these two dependable tractors.

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue Chicago, Illinois

INTERNATIONAL HARVESTER

Equipment Items (*Cont'd*)

K-M Two Speed Vibrator

For all types of massage, Knapp-Monarch, St. Louis, offers the K-M Two-Speed Vibrator. The vibrator comes equipped with four attachments, soft sponge rubber, hard plastic ivory ball, soft rubber vacuum cup, and rubber finger applicator. It operates on a-c only and is listed by Underwriters' Laboratories. Retail price: $3.95.

Lightweight, Compact Travel Iron

A smartly styled, compact and lightweight travel iron has been designed by the General Electric heating device section in Bridgeport, Conn.

The Textolite handle of the iron folds against the iron top in a jiffy, and the whole thing slips into a neat little zipper travelling case. The overall weight is less than two pounds and the iron can be tucked away in space less than that required by a week-end's readying.

The iron operates on either alternating or direct current, 500 watts, 115 volts. The list price is $4.95.

Catalogs and Bulletins

G-E Turbine Book

A 78-page book completely describing turbine-generators in ratings from 500 to 7500 kilowatts has been published by the General Electric Company. Designated GEA-3277-1, the new publication contains photos and charts which show the major steps in the manufacture of turbine-generator units. Sectional views of turbines, valve mechanisms, interconnecting mechanisms, generators, exciters and ventilation are given, as well as detailed sketches of various turbine types—straight condensing and noncondensing, condensing single and double extraction, noncondensing single and double extraction, and superposed. Reference charts of turbine steam rates are also included.

South Bend Lathe Catalog

A condensed catalog (No. 52) describing its entire line of lathes has been issued by the South Bend Lathe Works, South Bend, Ind.

Containing only 8 pages, this 8½ x 11 in. catalog may be placed in a binder or filed in a standard letter file. The condensed data includes illustrations, basic dimensions, capacities, speeds and feeds of back-geared, screw cutting lathes having 9, 10, 13, 14½ and 16 inch swings, with bed lengths from 3 to 12 feet.

In addition, numerous attachments for tool room and production work are illustrated and described.

Copies of this catalog, No. 52, are available upon request from the manufacturer.

Motors, Centrifugal Pumps and Texrope Drives

Allis-Chalmers Mfg. Co., Milwaukee, Wisconsin, has issued three equipment bulletins. One, an 8-page bulletin (B6052-B) concisely describes the complete line of the company's Lo-Maintenance Motors in ratings from ¾ to 75 hp, open, enclosed and splash-proof types, a-c and d-c.

The second, an 8-page book (B-6059) describes and illustrates the wide range of pumps built by this company. Included in the book are pumps for handling capacities from 10 to 200,000 gpm and for heads ranging from 10 to 4200 ft. Also single and double suction single stage pumps, double suction multi-stage pumps, open runner paper stock pumps, and axial flow pumps.

The third new publication is a 12-page bulletin (B-6051-B) describing the complete line of Texrope Drives. Included are the new Texrope Super-7 V-Belt, Duro-Brace Texsteel and True-Groove Texdrive sheaves, Vari-Pitch sheaves, FHP adjustable sheaves, and Vari-Pitch Speed-Changers. A new Texrope drive selection table makes it easy to figure the proper size of drive for each application.

Capacitors for Outdoor Mounting

Capacitors with ratings from 2½ to 180-kva, 230 to 4160 volts, for outdoor mounting on poles or cross arms are described in a 12-page bulletin announced by Westinghouse Electric and Manufacturing Company.

Application, distinctive features, and construction details are discussed, special attention being given to discharge devices, terminal bushings, and overcurrent protection. Complete information on mounting methods and brackets is explained and illustrated with diagrams of typical installations. Outline drawings give physical dimensions of the more common capacitor sizes. A tabulation gives ratings, weights and styles.

A copy of descriptive data 49-165 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

Catalog on Vibro-Insulators by Goodrich

Stripped of highly technical descriptions of the problem of isolating vibration in machines, The B. F. Goodrich Company, Akron, Ohio, has published a new 12 page catalog section on its Vibro-Insulators, the devices of metal and rubber which have found wide acceptance in combatting the vibration and noise problem.

Excellently illustrated, both with actual installation pictures and engineer's drawings of

Catalogs and Bulletins (*Cont'd*)

each type of Vibro-Insulator which it manufactures, the catalog section gives all the pertinent information on each.

Pennsylvania Transformer Book

Pennsylvania Transformer Company has just issued a new thirty-two page book entitled: "In the Front Line of the Nation's Defense." This attractive three color—lithographed brochure, graphically portrays many installations of Pennsylvania Transformers. It is a pictorial presentation of how Pennsylvania, in supplying power to America's major industries, is playing a vital role in today's National Defense Program. In addition, this book contains a wealth of industrial information.

Operating executives and engineers will find these installations of unusual interest. A copy of the book may be obtained by writing to the Pennsylvania Transformer Company, 808 Ridge Avenue, N. S., Pittsburgh, Pa.

Voltage Relays Bulletin

Relays to protect 115 to 460 volt, 60 cycle circuits or apparatus against voltage changes of any predetermined value are described in a new 8-page bulletin issued by Westinghouse Electric and Manufacturing Company.

Distinctive features, construction and operation are discussed. Voltage-time curves show per cent of maximum closing voltage at each setting of the relay time lever. Wiring diagrams show physical arrangement of coils and contacts as well as electrical connections. Outline drawings give overall dimensions and necessary mounting data. A tabulation lists styles and prices for 25 and 60 cycle relays for operation on 115 to 460 volt circuits.

A copy of catalog section 41-291 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

G-E Plastics Department

The plastics department of the General Electric Company, Pittsfield, Mass., has prepared a 64-page illustrated booklet telling how Textolite plastics are made—covering each step from raw materials to the finished product—and indicating the variety of applications for which different types of Textolite are suited.

The booklet may be classed as an introductory encyclopedia on plastics manufacturing, since it covers the whole range of operations of the G-E plastics department which, it points out, "is a self-contained unit and is the only plastics manufacturer in the country engaged in every phase of the business."

In eight sections the booklet covers raw materials, development, designing and engineering, mold making, molding, laminating and fabricated parts, industrial design, and commercial policy. Two other sections present in chart from the properties of Textolite molded and Textolite laminated.

Thermocouple Data Book

Wheelco Instruments Co., Chicago, has issued a new Thermocouple Data Book and Catalog.

Its 32 pages contain such valuable information as temperature conversion tables, millivolt tables, pipe and wire sizes, decimal equivalents, wire resistances, recommendations for checking thermocouples and pyrometers, information on how to construct thermocouples, etc.

Universal Fuse Links

Universal fuse links to meet the requirements of all distribution cutouts rated up to 15 kv are described in a new 8-page illustrated leaflet announced by Westinghouse Electric and Manufacturing Company.

Fuse links with ratings from 1 to 100 amperes are described. Application tables cover ratings for use with single and three phase transformers up to 2000 kv-a at 2300 to 220,000 volts. Time-current characteristic curves are shown.

A copy of descriptive data 38-665 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

Ideal's Anniversary Catalog

A new comprehensive 24-page illustrated catalog marking the company's 25th anniversary has been issued by the Ideal Commutator Dresser Co.

Manufacturers' Notes

Johns-Manville Contracts for Big Government Plant

Johns-Manville Corporation recently completed a contract with the War Department to construct and operate a $27,000,000 shell-loading plant, near Parsons, Kansas.

To be known as the Kansas Ordnance Plant, it will cover 25 square miles, comprise about 400 buildings, 75 miles of track, and 100 miles of road, and employ 8,000 persons.

In order to keep this new operation separate from its regular business, a subsidiary known as J-M Service Corporation has been organized. The cost of the work, including working capital, will be financed by the government. Construction will probably require a year; operation thereafter will depend upon the wishes of the War Department, according to an announcement by the company.

G-E Wire Plant Expanded

An extensive expansion program at General Electric's York, Pa. plant, where Deltabeston asbestos insulated wire and cable is made, is nearing completion, it has been disclosed by the G-E appliance and merchandise department, Bridgeport, Conn. The program is adding greater electrical capacity, much new production equipment, and a new warehouse.

Manufacturers' Notes (*Cont'd*)

A new outdoor power substation with underground feeders to all buildings now supplies the increased power needed in the expanded plant.

New Plants for Aluminum Co.

The Aluminum Company of America announces a contract with Defense Plant Corporation acting for the United States for the construction and operation of an alumina plant in Arkansas with an annual capacity of 400,000,000 pounds, and for the construction and operation of three aluminum smelting plants, one at Massena, N. Y., with an annual capacity of 150,000,000 pounds, another in the Portland-Oregon district with an annual capacity of 90,000,000 pounds, and a third in Arkansas with an annual capacity of 100,000,000 pounds.

The Aluminum Company also announces that the price of ingot aluminum will be reduced from 17 cents to 15 cents per pound on shipments made after September 30, 1941 and that reductions will be made in the price for fabricated aluminum in conformity to the ingot price reduction.

Ditto Opens Large New York Offices

Ditto, Inc., Chicago, makers of Ditto duplicators and supplies, announces the opening of new quarters at 400 Madison Ave., New York City. A feature of the new establishment, says Mr. Frank Gregor, Jr., the company's advertising manager, is an enlarged showroom, equipped not only for the display of Ditto machines but also for comprehensive demonstration of the Ditto business methods—made increasingly popular by the national emergency requiring speed and personal effectiveness throughout business. As before, Mr. Al Dunphy, Ditto's eastern manager, is in charge.

New G-E Building for Tube Manufacturer

Plans for a new building to be erected by the General Electric Company at Schenectady for the manufacture there of industrial and radio tubes, have been announced by Dr. W. R. G. Baker, manager of the company's radio and television department.

The building, to be located at the westerly side of the Schenectady Works, is expected to be ready for operation by February. A single-story manufacturing section will contain 120,000 square feet of floor space while 15,000 square feet of floor space will be available in a two-story office section.

New Plant for Peerless Pump

Announcement is made by the Peerless Pump Division of the Food Machinery Corporation of the completion and removal of its Eastern offices and manufacturing facilities from Massillon, Ohio, to a new and modern plant located at 1250 Camden Avenue, S. W., Canton, Ohio.

The new plant has approximately 55,000 square feet of floor space devoted to complete pump engineering, manufacturing, testing and sales, duplicating in great part and patterned after Peerless' new and modern Western manufacturing plant at Los Angeles, Calif.

The Canton plant remains under the same general management as the Los Angeles plant, Vernon Edler being vice president and general manager.

Wheelco Instruments Co. Expands

Wheelco Instruments Co., of Chicago, recently moved to the company's own building at Harrison and Peoria Streets.

The new location gives the company much needed space for their expansion program. Personnel in both the factory and offices is expected to be doubled.

Howard M. Hubbard Heads Elliott Company

The Board of Directors of Elliott Company recently announced the election of Howard M. Hubbard as president, effective September 1, 1941. Mr. Hubbard comes to Elliott Company from the Greenfield Tap and Die Corporation, of Greenfield, Massachusetts, where he has been president and general manager. Previous to his association with that Company, Mr. Hubbard served in various executive capacities with the Harris-Seybold-Potter Company of Cleveland, Ohio, one of the country's largest manufacturers of offset printing presses, paper cutting machines and allied machinery.

Mr. Hubbard, during his business career, has established an impressive record in the fields of industrial production, finance, marketing and management. His past experience in the manufacture of engineered products will contribute to the operations of Elliott Company who are established manufacturers of turbines, generators, condensers, centrifugal blowers and other power plant products.

Elliott Company maintains general offices at Jeannette, Pa., also has plants at Jeannette, Pa., Ridgway, Pa. and Springfield, Ohio.

Copperweld Promotes McIlvane

Copperweld Steel Company, Glassport, Pennsylvania, has announced the appointment of William J. McIlvane as general manager of sales of the company's "Copperweld" division.

Mr. McIlvane succeeds Robert J. Frank who resigned as vice president in charge of sales on July 31st. Mr. Frank will continue as a vice president and director of the company. Mr. McIlvane was formerly eastern district manager and later sales promotion manager for Copperweld.

Paul V. Osborn Joins Timken

Paul V. Osborn, former general manager of the Carrier Manufacturing Corporation, and later vice president of the Carrier Corporation, has joined the Timken-Detroit Axle Company, Detroit, Michigan, as assistant to the vice president.

Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews

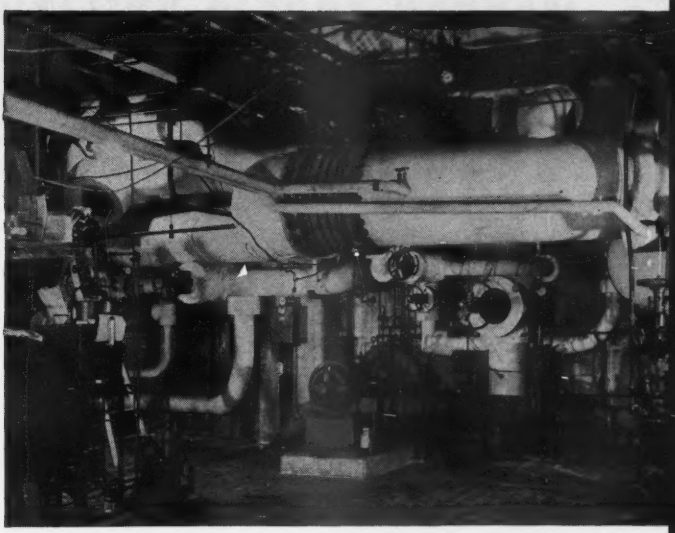
HOOSIER ENGINEERING COMPANY

CHICAGO — 46 SO. 5TH ST., COLUMBUS, OHIO — NEW YORK

Canadian Hoosier Engineering Company, Ltd.
Montreal

ERECTORS OF TRANSMISSION LINES

OES YOUR INSULATION INVESTMENT PAY A *FULL* RETURN?



N FURNACES where insulation is quired to resist temperatures up 1900° F., J-M Superex is widely cognized as the most efficient ock insulation available today. undreds of installations prove its ng life and low maintenance.

FOR TEMPERATURES UP TO 600° F., you save by using J-M 85% Magnesia. For years the standard material for insulating power-plant equipment and steam lines, it combines light weight with permanently high insulating efficiency.

OW MUCH MONEY you spend on fuel depends to a large xtent on the answers to these two questions:

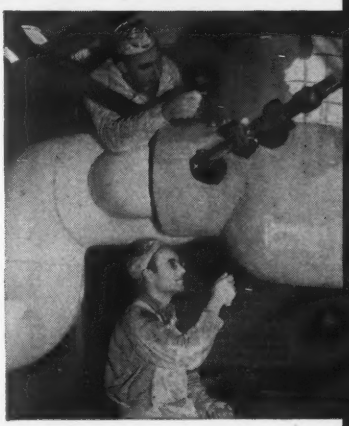
Are you using the *correct insulating materials?*

Are they applied in the *correct thicknesses?*

To assure every saving possible with insulation, it will pay ou to call in a J-M Insulation Engineer. Let him study our requirements . . . his specialized technical training and xperience will help you trace down and correct sources of eat waste that may otherwise go unnoticed.

From the complete line of J-M Insulations, he can recommend exactly the *material* you need for greatest efficiency . . exactly the *thickness* you need for maximum returns.

For full details on this helpful service and facts about the omplete line of J-M Industrial Insulations, write to Johns-Manville, 22 East 40th Street, New York, N. Y.



ON SUPERHEATED STEAM LINES, Johns-Manville Superex Combination Insulation provides an effective safeguard against costly heat waste. Built up of an inner layer of Superex and an outer layer of 85% Magnesia, this combination assures maximum heat resistance and insulating efficiency.

Johns-Manville INDUSTRIAL INSULATIONS

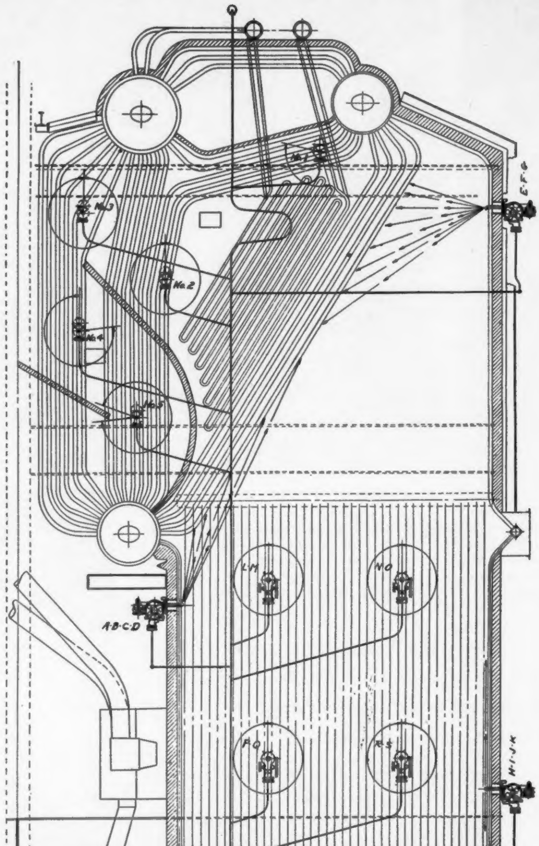
FOR EVERY TEMPERATURE . . . FOR EVERY SERVICE . . .

Superex . . . 85% Magnesia . . . JM-20 Brick . . . Sil-O-Cel C-22 Brick . . . Sil-O-Cel Natural Brick . . . J-M No. 500 Cement . . . Sil-O-Cel C-3 Concrete . . . Marinite

BAYER SOOT CLEANERS

APPLIED TO

MODERN PUBLIC UTILITY BOILERS

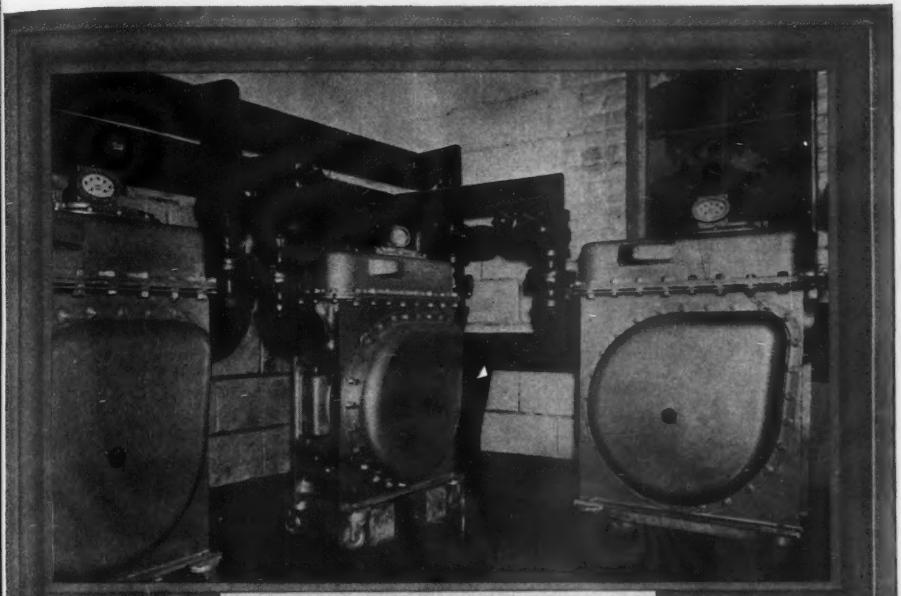


2500 H.P. BOILERS
660 LB. PRESSURE

PULV. COAL FIRED
770° F. STEAM TEMPERATURE

THE BAYER COMPANY **ST. LOUIS, MISSOURI**

This page is reserved under the **MSA PLAN** *(Manufacturers Service Agreement)*



PICTURE OF A MODERN FUEL BIN

EMCO LARGE CAPACITY PRESSED STEEL METERS

OF industry's three most widely used types of fuel, gas, coal and oil, gas alone offers unique savings in addition to its inherent operating advantages and efficiencies. In the case of storage, no valuable space is occupied, there are no annoying fire hazard requirements and no increased insurance premiums. In handling, gas is available at the turn of a valve. No expensive stoking or firing equipment, heating equipment or mixing valves are required. Also, the investment in stored fuel is eliminated, working capital is not tied up and payments are made after use, based on definite accounting periods.

This simple easy system of fuel supply is dependent upon metering equipment developed for this service itself. EMCO Pressed Steel Meters, developed specifically for industrial services, provide the necessary accuracy, ruggedness and simplicity. They have progressed hand in hand with the growth of industrial gas consumption.

EMCO No. 4½ Pressed Steel Meter

EMCO No. 5 Pressed Steel Meter

PITTSBURGH EQUITABLE METER COMPANY

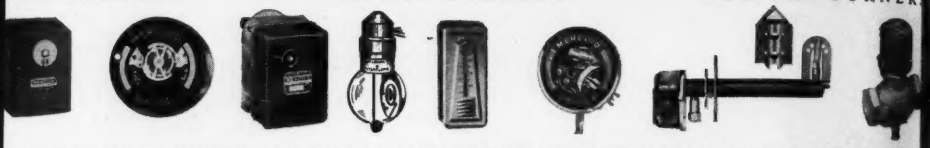
MERCO NORDSTROM VALVE COMPANY

Main Offices, Pittsburgh, Pa.

BUFFALO NEW YORK BROOKLYN TULSA CHICAGO PHILADELPHIA LOS ANGELES SAN FRANCISCO MEMPHIS DES MOINES KANSAS CITY SEATTLE HOUSTON COLUMBIA

IN ALL TYPES OF AMERICAN HOMES

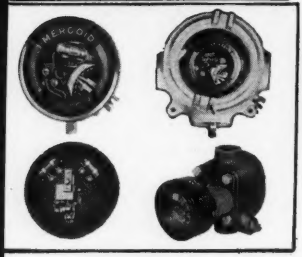
FOR STOKERS FOR OIL BURNERS FOR GAS BURNERS



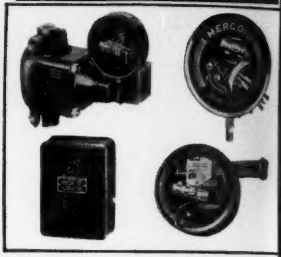
MERCOID HAS PIONEERED THE DESIGN AND DEVELOPMENT OF CONTROLS FOR DOMESTIC AUTOMATIC HEAT, AND TODAY THEY ARE FOUND IN TENS OF THOUSANDS OF HOMES THROUGHOUT THE COUNTRY

MERCOID
AUTOMATIC CONTROLS *are meeting* AMERICA'S NATIONAL DEFENSE CONTROL PROBLEMS

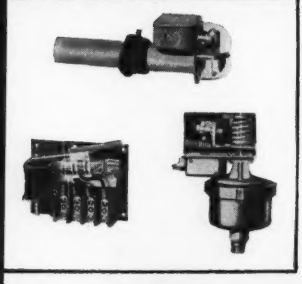
OIL AND GAS FIELDS



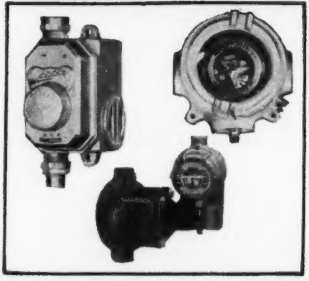
STEEL INDUSTRY



GENERAL INDUSTRY



AMMUNITION PLANTS



CHEMICAL INDUSTRY

IT HAS BEEN PUBLICLY STATED THAT THERE IS SCARCELY AN INDUSTRY IN THE COUNTRY THAT IS NOT USING A MERCOID CONTROL SOMEWHERE

Most are on vital applications in the control of temperature and pressure; also on automatic mechanical operations. • The time proven accuracy and dependable operation of Mercoid Controls make them indispensable during this time of National Emergency.

MERCOID HERMETICALLY SEALED MERCURY SWITCHES ARE USED EXCLUSIVELY IN ALL MERCOID CONTROLS

The initial cost is slightly higher than the average type of switches used in controls, but they save on the elimination of service expense, as there is infinitely less chance for contact trouble. They assure longer control life. • A Mercoid switch cannot be affected by dust, dirt or corrosion. • First illustration above, is a new light operated switch—the Mercoid Visaflame. This device has revolutionized the control of domestic and industrial oil burners. The second one shows the snap-action tilting type. Last one, the magnetic stationary type. • Mercoid switches are extensively used in many applications. • For further information see Mercoid catalog.

The Mercoid Corporation • 4233 Belmont Avenue • Chicago, Illinois

WAR ON WASTE

is essential when the Nation's man power and resources are engaged in the important task of building up a strong national defense. Mercoid Controls are especially suitable for carrying on a successful "war on waste" program wherever automatic controls are involved. They are built to endure and practically require no service attention after they are once installed.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction.

THE AMERICAN APPRAISAL COMPANY

INVESTIGATIONS, APPRAISALS AND STUDIES
for
ACCOUNTING AND REGULATORY REQUIREMENTS
NEW YORK WASHINGTON CHICAGO MILWAUKEE SAN FRANCISCO
and other principal cities

DAY & ZIMMERMANN, INC.

ENGINEERS

NEW YORK PHILADELPHIA CHICAGO
PACKARD BUILDING

Ford, Bacon & Davis, Inc.

DESIGN
CONSTRUCTION
OPERATING COSTS

Engineers

RATE CASES
APPRAISALS
INTANGIBLES

VALUATIONS AND REPORTS

NEW YORK PHILADELPHIA WASHINGTON CLEVELAND CHICAGO

J. H. MANNING & COMPANY

120 Broadway
New York

ENGINEERS

Field Building
Chicago

Business Studies
New Projects
Consulting Engineering

Purchase—Sales
Management

Valuations
Reorganizations
Mergers

Public Utility Affairs including Integration

SANDERSON & PORTER

ENGINEERS AND CONTRACTORS
Design and Construction of Industrials
and Public Utilities.
Reports and Appraisals in Connection
With Management Problems, Financing, Reorganization.

Chicago New York San Francisco

Sargent & Lundy

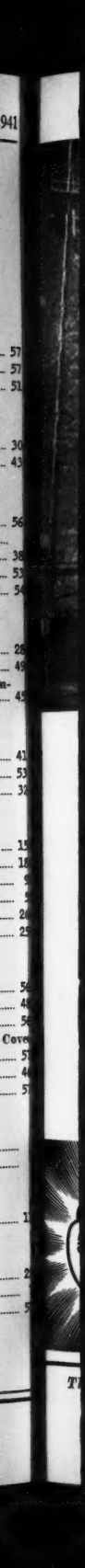
ENGINEERS
Steam and Electric Plants
Utilities—Industrials
Studies—Reports—Design—Supervision
Chicago

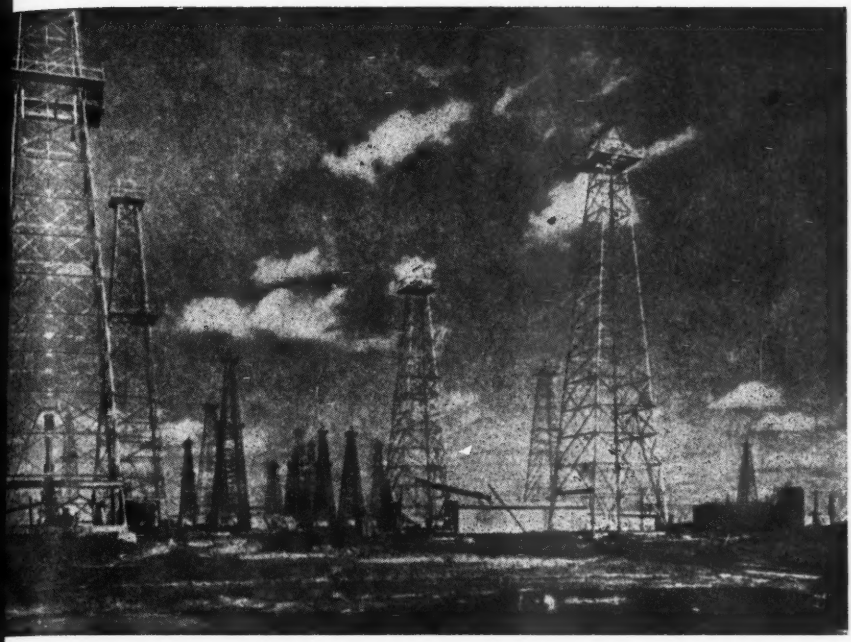
PROFESSIONAL DIRECTORY (*continued*)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

* Fortnightly advertisers not in this issue.





NATIONAL DEFENSE NEEDS MORE THAN "ELBOW GREASE!"

Industrial lubrication, as exemplified by the role of Cities Service, plays a vital part

Lifeblood of the factory line is the precious oil that keeps the wheels of industry turning . . . spinning ever faster and faster as tanks, ships, planes and trucks spring from blueprints into cold steel.

In many phases of national defense, Cities Service's industrial oils have been called upon to help deliver maximum efficiency of operation.

We are honored by our selection, feeling that it indicates more plainly than words that we are qualified to meet the lubrication problems of industry. The vast experience of our Lubrication Engineers is available for consultation without cost. All you have to do is get in touch with us at any of the offices listed below.

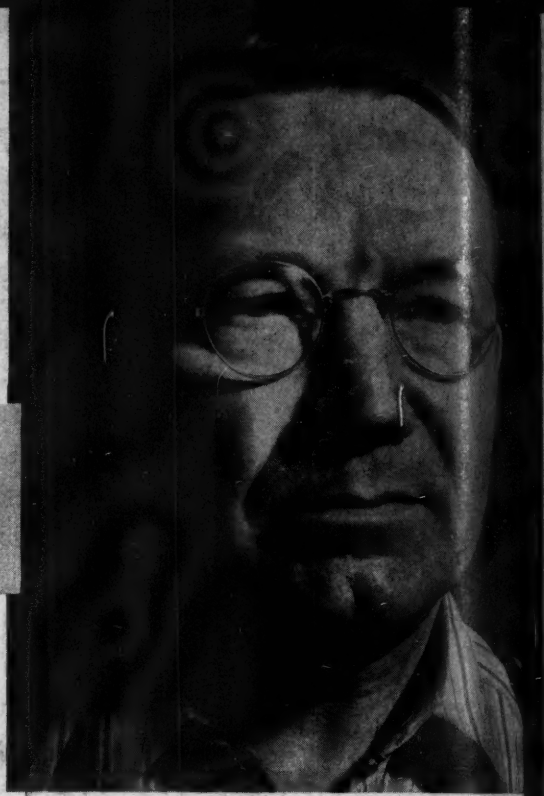
CITIES SERVICE OILS
ONCE-ALWAYS

CITIES SERVICE OIL COMPANIES

CITIES SERVICE OIL COMPANY — Chicago, New York, Cedar Rapids, Boston, St. Paul, Grand Forks, Kansas City, Fort Worth, Oklahoma City, Milwaukee, Cleveland, Detroit, Syracuse.

CITIES SERVICE OIL COMPANY, LTD. — Toronto, Ontario.

ARKANSAS FUEL OIL COMPANY — Shreveport, Little Rock, Jackson, Miss., Birmingham, Atlanta, Charlotte, N. C., Nashville, Richmond, Miami.



VETERAN

HE is independent and proud, yet democratic and friendly. He is the envy of the rest of the world, and its hope. He is generous and tolerant and peace-loving—and withal the most powerful man in the world. He is the American workman.

His hands, accustomed to the feel of wrench and lever and gauge, may never have held a gun; his mind, trained to think in terms of tolerances as fine as 1/10,000 of an inch, may never have wrestled with a problem of military strategy; and yet he is the veteran of a thousand campaigns.

His campaigns began in the laboratories, and his prowess was proved in the test pits of American industry. His battles were waged on the factory floor and in the field. His victories have helped to make the citizens of the United States the most fortunate people in the world, and the U. S. the greatest nation on earth.

In the plants of the General Electric Company, working with General Electric scientists and engineers, this man, the American workman, has made giant generators to light whole cities, X-ray tubes to penetrate the mysteries of human flesh and metal castings, radio and television apparatus to project man's voice and image through space over the mysterious waves of the ether.

Today, in the gravest hour of world history, he is engaged in the greatest campaign of all. But there is serenity and confidence in his face, and the experience of a thousand campaigns behind him. He is sure of his own abilities, certain of his country's future. General Electric Company, Schenectady, N. Y.

GENERAL ELECTRIC

952-218B1-211